MEETING

STATE OF CALIFORNIA

HORSE RACING BOARD

In the Matter of:)
)
Regular Meeting)
)

ARCADIA CITY HALL

240 WEST HUNTINGTON DRIVE

ARCADIA, CALIFORNIA

THURSDAY, OCTOBER 18, 2007

9:07 A.M.

Reported by:
Troy A. Ray

APPEARANCES

COMMISSIONERS

Richard B. Shapiro, Chairperson

John C. Harris, Vice-Chairperson

John Amerman

John Andreini

Jesse H. Choper

Marie Moretti

Jerry Moss

Ingrid J. Fermin, Executive Director

STAFF

Jacqueline Wagner, Staff Services Manager I

Derry L. Knight, Deputy Attorney General

Richard Bon Smith, Assistant Executive Director

Mike Marten

Roberto Zavala

ALSO PRESENT

Dr. Rick Arthur, Equine Medical Director

Jerry Jamgotchian

Drew Couto

Mr. Harlowe

Brad Blackwell

Jack Liebau

Barry Broad

Eual Wyatte

APPEARANCES CONTINUED

ALSO PRESENT

David Nathanson

Scott Daruty

Cathy Christian

Rod Blonien

Doug Kempt

Chris Korby

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1 PROCEEDINGS

2 EXECUTIVE DIRECTOR FERMIN: Okay, this is the
3 regular meeting of the California Horse Racing Board on
4 Thursday, October 18th, 2007, at the Arcadia City Hall, 240
5 West Huntington Drive, Arcadia, California.
6 Present at today's meeting are Chairman Richard
7 Shapiro, Vice-Chairman John Harris, Commissioner John
8 Amerman, Commissioner John Andreini, Commissioner Jesse
9 Choper, Commissioner Marie Moretti, and I believe
10 Commissioner Jerry Moss will be here.
11 We're going to go on and go into closed session.
12 So at this time we'll close the meeting and come back,
13 hopefully, in a short period of time.
14 (Thereupon, the Executive Session
15 was held off the record at 9:07 a.m. and
16 the Open Session was reconvened at 10:25 a.m.)
17 EXECUTIVE DIRECTOR FERMIN: We had opened the
18 meeting at nine o'clock this morning and -- we had opened
19 the meeting at nine o'clock this morning and then adjourned
20 for Executive Session.
21 I just want to remind everybody, as we reopen,
22 that please state your name clearly for the court reporter
23 and address either from the podium or from the area down
24 here, where there's seating available. Thank you.
25 COMMISSION CHAIRMAN SHAPIRO: Good morning,

everybody.

The Board invites comments from the public about items on its agenda, it also invites public comment about items not on the agenda, that are related to horse racing, during the open comment period.

Please note that unduly repetitious comments or extended discussion of irrelevancies disrupt the meeting and prevent the Board from accomplishing its business in a reasonably efficient manner.

In order to assure that each individual who wishes to comment will have an adequate opportunity to do so, and also to assure that the meeting as a whole will be completed in a timely manner so that individuals wishing to comment on multiple matters will not be required to stay for an unreasonable length of time, I will strictly enforce a five-minute time limit for each person wishing to speak on any agenda item.

The goal of this rule is to assure that each person's right to make their views known is not disrupted by another person's conduct.

In order to expedite the comment process, there is a public comment -- there are public comment cards -- one day we'll get this script right -- for each agenda item on which public comments will be taken, as well as cards for the comment about anything related to horse racing, that is

1 not on the agenda.
2 The cards are located at the podium, where Carol
3 Merrill is about to show them -- oh, no, that was Drew.
4 Okay, Drew Couto.
5 When I call your name, please come to the podium
6 to speak. I will let you know when your time has commenced
7 when there is one minute left, and when your time is up.
8 When your time is up, you will be expected to return to your
9 seat so that I may call the next person waiting to the
10 podium.
11 When all the names have been called, I will ask if
12 anyone else has a comment on the agenda item, who has not
13 already spoken. At that point the Board will not take any
14 further comment on an item, unless the Board has specific
15 questions it wishes addressed.
16 If the time is up, I will ask the speaker to
17 please take his or her seat. If a speaker is repeating
18 himself or herself, I will ask the speaker if he or she has
19 any new comments to make. If not, I will ask the speaker to
20 allow the next speaker to come to the podium, irrespective
21 of the time remaining, unless a Board member indicates that
22 he or she still wishes to hear from the individual.
23 If it appears that a speaker is not speaking to
24 the agenda item or is speaking to another agenda item, I
25 will ask the speaker to please return to his or her seat,

1 and address his or her comments at the appropriate time,
2 either on that specific item or at public comment.
3 I'm already getting cards.
4 Good morning and thank you to everybody, I'm
5 hopeful that this meeting can actually be run rather
6 quickly.
7 We don't have minutes at this meeting. Therefore,
8 we will go to Item Number 1, which is public hearing and
9 action by the Board on the adoption of the proposed
10 amendment to CHRB Rule 1843.2, classification of drug
11 substances to reclassify specific drug substances.
12 Jackie?
13 STAFF SERVICES MANAGER WAGNER: Good morning,
14 Jackie Wagner, CHRB staff.
15 As you are all aware, the initial proposal to
16 amend Rule 1843.2, to delete the seven drug classifications
17 and reference the document CHRB Penalty Category Listing by
18 Classification has been adopted and is currently at the
19 Office of Administrative law undergoing it's 30-day review
20 process.
21 The proposal before you today was a proposal that
22 was subsequently agreed upon at the June 27th Medication
23 Committee meeting, and this amendment reclassifies several
24 drugs that are listed in the CHRB document, CHRB Penalty
25 Categories Listed by Classification.

1 Since this document is incorporated by reference,
2 every time we make a reclassification or an addition to the
3 drug substances, it would require that the rule be amended.
4 The amendment also adds the Administrative Law
5 Judges and the Hearing Officer to the text, to identify
6 those individuals who are adjudicating hearings for
7 medication violations.
8 The proposal has been submitted for the 45-day
9 comment period. During the comment period staff received no
10 comments on the proposal, and we would recommend that the
11 Board adopt it as presented.
12 COMMISSION CHAIRMAN SHAPIRO: Okay. Does anybody
13 have any comments to this matter? Dr. Arthur?
14 EQUINE MEDICAL DIRECTOR ARTHUR: The Board first
15 heard this quite a long time ago, and what these primarily
16 are, are reclassifying or actually adding drugs that were
17 not on the list, primarily anabolic steroids that are not
18 typically used, and a number of nonsteroidal anti-
19 inflammatories.
20 This will be pretty much an ongoing process, we'll
21 probably have to go through this from time to time. I
22 should point out that there are four drugs that will be
23 classified as penalty D and, of course, this doesn't take
24 effect until the penalty guidelines are in place, but those
25 would be nandrolone, boldenone, stanozolol and testosterone,

1 and as part of our strategy to implement anabolic steroid
2 regulation in California. So this is part and parcel of
3 that effort.
4 But updating this list, because it is referenced
5 in our rules, will be a -- we'll repeat this, probably,
6 semi-annually.
7 Are there any questions?
8 COMMISSIONER HARRIS: And Doctor, I support what
9 we're doing, but on the Equipoise and Winstrol, to the
10 anabolic steroids --
11 EXECUTIVE DIRECTOR FERMIN: It's not on there.
12 COMMISSIONER HARRIS: There it is. Anyway, on
13 Equipoise and Winstrol, those will be D's, as I understand
14 it, and won't really be in effect until these rules are
15 passed. But when that happens, will there be a threshold on
16 those or how are we actually going to handle those?
17 EQUINE MEDICAL DIRECTOR ARTHUR: I'm working on an
18 amendment to 1844, that I will submit to the Medication
19 Committee in November and, hopefully, be approved by the
20 Board in November, as well, that will put specific threshold
21 levels in for those drugs.
22 At the same time, when we know when that is going
23 to move forward, and I would like to point out that if we
24 introduce that regulation in November, the earliest it would
25 become effect would be April 1st, and that is with no

1 opposition and no problems.

2 Then we also have to amend this 1843.2, as well,

3 to move those into a more appropriate penalty category and

4 drug classification, boldenone, stanozolol, testosterone and

5 nandrolone. Boldenone is Equipoise, stanozolol is Winstrol.

6 COMMISSIONER HARRIS: Well, what would the thought

7 be as far as threshold, as far as how far out would

8 those --

9 EQUINE MEDICAL DIRECTOR ARTHUR: You're probably

10 looking at, and this is why we want to ease into this,

11 because during these next few months what we'll be doing is

12 the RMTC is starting research at Florida and UC Davis to

13 actually determine withdrawal times on these drugs, not only

14 in urine, but blood as well. And 1844, if you'll remember,

15 already has an avenue by which we can start regulating these

16 in blood, as well as urine. And as that becomes available,

17 then we will add those to our regulations.

18 But to get back to your original question, the

19 estimate now is, for stanozolol, you're looking at a minimum

20 of 15-day withdrawal time, possibly as long as 45 days. For

21 boldenone, probably 30 to 60 days.

22 That will essentially prohibit their use in

23 animals while they're performing.

24 COMMISSIONER HARRIS: Yeah, I mean, I support what

25 we're doing, although I think there are a lot of counter

1 arguments that people make on the use of these. But I think
2 it's important that people understand, when we get there,
3 that this is something that is going to be a rule that they
4 need to be paying close attention to.
5 EQUINE MEDICAL DIRECTOR ARTHUR: Right. We're
6 trying to do this in a sequential way, ease the rule into
7 effect so that horsemen have plenty of time, so that when we
8 actually get everything lined up, everybody's going to know
9 exactly where the boundaries are.
10 And I certainly would hope that this Board would
11 set, as a goal, having anabolic steroid regulation in place
12 well in advance of Breeder's Cup next year. And, hopefully,
13 Breeder's Cup in California will be anabolic steroid free,
14 which would be the first time in American racing.
15 COMMISSION CHAIRMAN SHAPIRO: Well, I'd like to
16 echo that I also hope that, that the sport will head in that
17 direction, and I think we need to do everything we can so
18 that we can bring this issue to a head well before that
19 time. So thank you.
20 Does anybody else have any other comment? If not,
21 I will entertain a motion -- I will entertain a motion, and
22 then we'll take public comment. Is there a motion?
23 COMMISSIONER MORETTI: I would move to adopt this.
24 COMMISSION CHAIRMAN SHAPIRO: There's a move, is
25 there a second?

1 COMMISSIONER MOSS: Second.
2 COMMISSION CHAIRMAN SHAPIRO: Okay. Public
3 comment, Mr. Jamgotchian.
4 MR. JAMGOTCHIAN: Mr. Chairman, members of the
5 Board, Jerry Jamgotchian. Before I start, there was a
6 closed session that was held prior to this meeting, and the
7 Government Code Section 54957.1 requires the --
8 COMMISSION CHAIRMAN SHAPIRO: Mr. Jamgotchian, Mr.
9 Jamgotchian, we are on Agenda Item Number 1.
10 MR. JAMGOTCHIAN: I understand that, but there's
11 no --
12 COMMISSION CHAIRMAN SHAPIRO: And, Mr.
13 Jamgotchian, Agenda Item Number 1 is all that we're talking
14 about at this time. We're not talking about --
15 MR. JAMGOTCHIAN: Yeah, but there was a closed --
16 COMMISSION CHAIRMAN SHAPIRO: If you have a
17 comment about Item Number 1, please keep it to Item Number
18 1.
19 MR. JAMGOTCHIAN: You know, Mr. Shapiro, I just
20 wanted to make sure that the CHRB follows the law. Now, if
21 you don't wish to follow the law, please tell me and I won't
22 mention it.
23 COMMISSION CHAIRMAN SHAPIRO: Do you have a
24 comment about what we are talking about on this agenda?
25 MR. JAMGOTCHIAN: Yes. Yes, I do.

1 COMMISSION CHAIRMAN SHAPIRO: Then please make
2 your comment about that.
3 MR. JAMGOTCHIAN: But my comment relates to the
4 closed session and you --
5 COMMISSION CHAIRMAN SHAPIRO: That is not Agenda
6 Item Number 1.
7 MR. JAMGOTCHIAN: There's no agenda item for the
8 closed session.
9 COMMISSION CHAIRMAN SHAPIRO: Excuse me, sir.
10 MR. JAMGOTCHIAN: Yes.
11 COMMISSION CHAIRMAN SHAPIRO: Agenda Item Number 1
12 is a public hearing and action by the Board on the adoption
13 of the proposed amendment to CHRB Rule 1843.2,
14 classification of drug substances. Do you have a comment
15 about that?
16 MR. JAMGOTCHIAN: I can read, Mr. Shapiro.
17 COMMISSION CHAIRMAN SHAPIRO: Do you have a
18 comment about that?
19 MR. JAMGOTCHIAN: No, I'm asking you --
20 COMMISSION CHAIRMAN SHAPIRO: If you don't, please
21 go back to your seat.
22 MR. JAMGOTCHIAN: No, I'm asking you -- no, I'm
23 asking you -- I have a comment.
24 COMMISSION CHAIRMAN SHAPIRO: I'm going to ask you
25 to please go back to your seat unless you have a comment

1 about that item.
2 MR. JAMGOTCHIAN: Okay, then I'll respond to that,
3 Mr. Shapiro.
4 COMMISSIONER CHOPER: Excuse me. There is an item
5 on the agenda, Number 6, which is general public comment,
6 and I think what the Chairman's trying to do is keep it on
7 the agenda. You'll have your opportunity, I think. That's
8 right, is it not?
9 COMMISSION CHAIRMAN SHAPIRO: That's correct.
10 MR. JAMGOTCHIAN: Okay, is that acceptable?
11 COMMISSION CHAIRMAN SHAPIRO: We will have -- if
12 you will notice, Item Number 6 is public comment.
13 MR. JAMGOTCHIAN: Is that acceptable?
14 COMMISSION CHAIRMAN SHAPIRO: We are talking about
15 Item Number 1.
16 MR. JAMGOTCHIAN: Is that acceptable?
17 COMMISSION CHAIRMAN SHAPIRO: Do you have a
18 comment on that?
19 MR. JAMGOTCHIAN: Yes, I do. With regards to the
20 medication issue that we're talking about, it's interesting
21 that the State of Kentucky just suspended Mr. Biancone
22 (phonetic) for one year, for what he did, yet the CHRB
23 refuses to maintain hearings for some of its licensees, who
24 violate these conditions that Mr. Arthur just mentioned.
25 One of which is Chris Vienna.

1 COMMISSION CHAIRMAN SHAPIRO: Okay, Mr.
2 Jamgotchian, we are talking about classification of drug
3 substances.
4 MR. JAMGOTCHIAN: Right.
5 COMMISSION CHAIRMAN SHAPIRO: We're not talking
6 about any individual cases.
7 MR. JAMGOTCHIAN: Okay.
8 COMMISSION CHAIRMAN SHAPIRO: We're not talking
9 about any actions taken by this jurisdiction or any other
10 jurisdiction.
11 MR. JAMGOTCHIAN: Okay, we'll talk about it
12 generally, then.
13 COMMISSION CHAIRMAN SHAPIRO: If you have a
14 comment about the drug classifications, please state it.
15 Otherwise, please go back to your seat.
16 MR. JAMGOTCHIAN: I have two questions with
17 regards to drugs. Number one, does the CHRB wish to
18 institute a suspended person rule in the regulations that
19 Mr. Arthur just mentioned? Because I don't understand why a
20 trainer, who violates the code sections, should be allowed
21 to train horses, or have a friend, or a family member train
22 horses and still benefit.
23 I know other states, I think it's Indiana, and now
24 Kentucky, are putting in these regulations with regards to
25 the suspended person's rule, yet, California takes no

1 direction and doesn't really care.
2 COMMISSION CHAIRMAN SHAPIRO: Mr. Jamgotchian, I'm
3 again trying to give you latitude. We are talking about the
4 classification of drug substances. We are not talking about
5 penalties. We are talking about drug substances.
6 Do you have a comment about this agenda item?
7 MR. JAMGOTCHIAN: No, I don't, Mr. Shapiro.
8 COMMISSION CHAIRMAN SHAPIRO: Thank you.
9 MR. JAMGOTCHIAN: Thank you.
10 COMMISSION CHAIRMAN SHAPIRO: All right, I would
11 then ask for the vote. All those in favor of adopting --
12 EXECUTIVE DIRECTOR FERMIN: Dr. Arthur.
13 COMMISSION CHAIRMAN SHAPIRO: Oh, Dr. Arthur.
14 EQUINE MEDICAL DIRECTOR ARTHUR: Mr. Chairman, I
15 can't sit here and let those statements go unanswered.
16 COMMISSION CHAIRMAN SHAPIRO: Dr. Arthur --
17 EQUINE MEDICAL DIRECTOR ARTHUR: The penalty
18 guidelines that we are awaiting, that are at OAL,
19 specifically addresses those issues. They have been going
20 through the process for well over a year and it's just the
21 way the government works.
22 COMMISSION CHAIRMAN SHAPIRO: Dr. Arthur, I
23 appreciate it, thank you.
24 I would like to call for the vote. All those in
25 favor of adopting this, all in favor?

1 (Ayes.)

2 COMMISSION CHAIRMAN SHAPIRO: Opposed? None.

3 Thank you, it is carried and passed.

4 Item Number 2, discussion and action by the Board

5 regarding the feasibility of allowing a horse that has not

6 started for a minimum of 180 days since it's last race, and

7 is entered in a claiming race at a price equal to or greater

8 than the price at which it last started, to be entered in a

9 claiming race and declared ineligible to be claimed.

10 This matter was brought forward to us initially,

11 by TOC, and I believe the TOC actually presented to us what

12 they would like to see in terms of this. I, personally,

13 think this is a good idea. The question is do we need to

14 adopt a rule to accomplish it, and is what TOC proposing the

15 proper way?

16 And, therefore, I would ask that TOC come forward,

17 perhaps, and outline for us what they're proposing, to start

18 this discussion. Thank you.

19 MR. COUTO: Good morning, Drew Couto, Thoroughbred

20 Owners of California.

21 As I think we communicated to the Horse Racing

22 Board before, what we're asking for is a new rule be

23 adopted, unless a rule is deemed not necessary by the Horse

24 Racing Board, but a new rule that would permit horses that

25 have not run for 180 days or more to be entered into a

1 claiming race, with an option to be not claimed. They come
2 back, they get one race in a claiming race, in a level they
3 last competed at or higher, so that there is an incentive to
4 owners to give the horses time off. And once they have
5 given horses time off for their well being, to come back and
6 get one race without being eligible to be claimed
7 What we have seen is that horses that are given
8 time off come back as fresh horses, and typically are
9 claimed coming out of the first race.
10 And so this is one way to protect the investment
11 made by the owner in doing the right thing for the horse
12 but, more importantly, it's a way to protect the horse, to
13 protect the well being and health of the horse by
14 encouraging those, who do own it, to give the horse some
15 time off.
16 And I recognize that we may have others, who
17 believe there are other ways to do this. Let me assure the
18 Horse Racing Board that this proposal is the result of at
19 least two meetings of our Racing Affairs Committee which, as
20 you know, includes representatives from Northern California
21 and Southern California, as well as the racing departments
22 for MEC, for Hollywood Park, for Fairplex, for Oak Tree, and
23 it was the combined judgments of those groups that this was
24 the best way to effect that noble purpose in protecting the
25 health and well being of the horse.

1 And so we have proposed if, indeed, a rule is
2 necessary, if the Board believes a rule is necessary, or
3 this can be granted by administrative action of the Board,
4 if a rule is necessary, we propose the establishment of a
5 new Rule 1634, and the language we have submitted we are
6 asking be adopted as the new rule.
7 COMMISSION CHAIRMAN SHAPIRO: Thank you. I,
8 personally, think this is a great idea and I think it's
9 wonderful that we're going to try to encourage people to lay
10 up their horses, and bring them back and not lose the
11 investment.
12 The question is, is this the best way to do it and
13 do we, in fact, need -- where did Derry go? You switched
14 sides on me today. Do we, in fact, need a rule?
15 You know, I don't know why the Racing Board's
16 involved in this. I kind of think that if the horsemen and
17 the tracks want to do this, I wish they could do it without
18 our intervention.
19 COMMISSIONER HARRIS: Yeah, it seems like we
20 already have optional claiming races, which is very similar,
21 a little inverse of what we're doing here. But I think the
22 racing office can do it. It takes us a long time to do
23 these rules, they're costly, and we publish all this stuff.
24 I'd like to just have the endorsement of the concept by the
25 Board, and if there's no objections, that they can do it.

1 I'm not sure this is the very best way to do it,
2 because a lot of times when you're bringing a horse back, it
3 needs more than one start.
4 But the concept is good that we need to clearly
5 give people incentives to lay up horses, and especially a
6 cheaper horse. If you've got a five or ten thousand dollar
7 horse, it's going to cost you more to bring it back than
8 it's worth. And if you lose that horse the first time out,
9 you know, you basically, probably should have never even
10 spent the money on it.
11 But I just don't see why we can't do this -- why
12 it really takes a rule to do this.
13 COMMISSION CHAIRMAN SHAPIRO: Well, again, I
14 would -- I'm sorry, did I cut you off?
15 COMMISSIONER AMERMAN: I was going to ask Mr.
16 Couto, or the CHRB staff, do we have any experience in the
17 incidence of this happening, how often does it -- what
18 percentage of horses coming back, that have been laid off
19 for 180 days or more, and they are claimed the first time
20 out, do we know how often it happens?
21 MR. COUTO: We have not quantified it, but we
22 know, anecdotally, it happens a fair amount of time.
23 COMMISSIONER AMERMAN: I don't know what a fair
24 amount of time is, is it two percent, is it 20 percent?
25 MR. COUTO: I'd be speculating if I gave you a

1 number. A sufficient number --
2 COMMISSIONER AMERMAN: Well, shouldn't we find out
3 that before we jump into a new rule? As Mr. Harris has
4 said, it seems to me that we need to have our facts right
5 before we go into it.
6 COMMISSIONER HARRIS: I think part of it would be,
7 though, that we're not even training the horse out, now. A
8 lot of times if somebody has a horse worth between five or
9 ten thousand, and it develops a problem and it's going to
10 take a year off, the horse never comes back, period, because
11 the cost of bringing it back is more than it's going to run
12 for.
13 But I agree, I'd like to see the data. I
14 question, really, if that big a percent of them --
15 COMMISSIONER AMERMAN: And, also, there's no
16 question that there are optional claiming races that are out
17 there, at the present time, that you can go into. So
18 allowance, optional claiming races, it seems to me that
19 that's where they could be brought back.
20 COMMISSION CHAIRMAN SHAPIRO: Well, happens with,
21 let's say somebody's got a $25,000 claimer, and they want to
22 send the horse our, freshen it up, and it's out for six
23 months and it comes back, and there isn't an optional
24 claiming race for that horse? What I understand is there
25 would be -- that horse could go back into where it last

1 raced, so to speak, let's say a $25,000 claiming race, and
2 yet the cost of rehabing the horse, or refreshing it, they
3 want to put it in, but they don't want to lose it the first
4 start back.
5 COMMISSIONER HARRIS: But optional claiming does
6 that. I mean, it's sort of the inverse. Usually, the
7 optional claiming is -- the optional part is enter for
8 claiming.
9 My proposal would be you'd have optional claiming,
10 where you didn't enter for claiming, but to fit that
11 allowance category you couldn't have started for so long
12 and/or you could go in for claim. You couldn't have started
13 for so long and your last out was for some claiming price or
14 less. But if you didn't fit that category, then you enter
15 it for claim. So the ones, the current horses that are in
16 it for claim, and the laid-off horse takes the optional part
17 of not entering it for claim.
18 MR. COUTO: And I'd like you to consider, with
19 regard to the statistics that, you know, at least in talking
20 to the owners we have, and the trainers we have, and the
21 racing offices we have, right now what you have is a system
22 that creates a disincentive to give a horse time off.
23 So if you go back and you look at the incidences,
24 you're looking at a time -- you're looking at a scenario in
25 which the circumstances currently don't encourage people to

1 give these horses time off, they don't do that, they keep
2 them running or drop them to be taken.
3 So if you go now, and look at it, you're not going
4 to find as many people taking advantage of the opportunity
5 to give a horse time off. The whole point here is that
6 you're going to give more horses time off because the owner,
7 who makes the investment in doing the right thing for the
8 horse, then gets to bring the horse back with one free shot
9 to determine where that horse sits.
10 Now, an optional claiming race is a very different
11 quality race than a typically claiming race. And so what
12 you're saying is you have to bring this horse back in a very
13 difficult level of competition, which they won't do. I
14 mean, with this --
15 COMMISSIONER HARRIS: Well, my reference to
16 optional claiming was not the existing optional claiming,
17 it's a new type of optional claiming that fits our rules. I
18 mean, you could write -- I mean, hopefully, racing
19 secretaries are intelligent enough to write a variety of
20 races, and I'm sure they can come up with a race that fits
21 our rules, and also fits the goals we're trying to get to.
22 MR. COUTO: Well, you know, it would be nice if
23 they could do that, and I think that's interesting. The
24 problem is that we've all sat down to try and figure out a
25 way to solve this today, and the solution that we all came

1 to agree upon, considering a number of options, was this
2 one.
3 And, you know, other than the fact that we have to
4 go through a rule-making process, the intent is -- I don't
5 think anybody will question the intent. And whether or not
6 it will or will not succeed is pure speculation on all of
7 our parts.
8 The point is that today we know that people do not
9 give these horses time off because there's no value in that,
10 or perceived value in that. What this rule hopefully will
11 do is encourage owners to give the horse time off, knowing
12 that when they bring that horse back they have, at their
13 option, the ability to enter a claiming race at the same
14 level or above, without being eligible to claim, one time.
15 And we think that is a very important purpose, one that we
16 shouldn't speculate about, that we should go ahead and give
17 a chance.
18 COMMISSION CHAIRMAN SHAPIRO: Can I come at it a
19 different way? Is there anybody on the Board that has a
20 problem with this concept? Because if we don't have a
21 problem with this concept, the truth is that I think we
22 should be trying to find a way to give the latitude to the
23 horsemen and to the tracks, so that they can craft what is
24 the best way to do this.
25 And so I would then ask is there a way for us to,

1 either through waive a certain rule for a portion of time,
2 or determine in case we do need a new rule, otherwise make a
3 determination that we don't need a new rule and to give the
4 power to the tracks and the horsemen to craft a way so that
5 they can accomplish this goal.
6 COMMISSIONER HARRIS: Yeah, I think that's what we
7 need to do.
8 COMMISSIONER MORETTI: I don't have a problem with
9 it. The only -- I mean, the racing secretary's, I would
10 think that you would be able to come together.
11 COMMISSION CHAIRMAN SHAPIRO: Well, their problem
12 is that I believe that they're concerned that they don't
13 want to violate a CHRB rule, and I believe that our counsel
14 may believe, under our existing rules, that there may be a
15 rule necessary to accomplish this.
16 COMMISSIONER HARRIS: If that's the case --
17 COMMISSION CHAIRMAN SHAPIRO: I'm trying to find
18 out how we can --
19 COMMISSIONER MORETTI: Well, twice you said "if
20 it's necessary." So is your question basically directed to
21 our counsel, then, is it necessary?
22 MR. COUTO: He would have to answer that question,
23 is my guess.
24 COMMISSIONER MORETTI: You don't know.
25 COMMISSIONER HARRIS: I mean, we've been writing

1 optional claiming races for years and it's never been
2 challenged, and that's --
3 MR. COUTO: But, again, Mr. Harris, you and I
4 trade e-mails, an optional claiming race is an allowance
5 race by definition, it's not a claiming race and, therefore,
6 they're not violating any existing rule.
7 COMMISSIONER CHOPER: Well, can I ask two
8 questions? First is in your consideration of all of this,
9 were there any objections raised to this by anybody? What
10 are the opposite arguments with respect to this, are there
11 any?
12 MR. COUTO: None, that we're aware of.
13 COMMISSIONER CHOPER: So let me ask this, if you
14 have the agreement of all of the tracks in the State, and
15 the owners want to do this, do you know of anything that
16 would stop the racing secretary from simply writing this as
17 one of the conditions of the race? That is to say claiming
18 for $10,000, except if the horse has not raced within 180
19 days, and has raced for a claiming price of whatever,
20 however you fill that in. And it's sort of like a starter's
21 allowance race.
22 The difference is that that is open to every horse
23 in a race. But that's not really true, as I thought it
24 true, this is open to every horse in the race, too, who
25 hasn't raced in 180 days.

1 MR. COUTO: That's correct.
2 COMMISSIONER CHOPER: So it's an even playing
3 field for everybody. And I would think that unless there's
4 some rule that say that racing secretaries have limits on
5 putting conditions, that's the problem.
6 EXECUTIVE DIRECTOR FERMIN: The rule that is of
7 concern would be 1652, probably C and D. Derry, is that
8 where you're reading possibly it could be?
9 DEPUTY ATTORNEY GENERAL KNIGHT: Yeah.
10 EXECUTIVE DIRECTOR FERMIN: And also --
11 COMMISSIONER CHOPER: Is that here, in the
12 materials?
13 EXECUTIVE DIRECTOR FERMIN: Yes.
14 COMMISSION CHAIRMAN SHAPIRO: It's in your book.
15 COMMISSIONER CHOPER: 1652.
16 MR. COUTO: If I could just respond, Mr. Choper, I
17 believe the problem stems not from the rule book, but from
18 the Business and Professions Code. In the Business and
19 Professions Code it defines what a claiming race is.
20 COMMISSIONER HARRIS: Do we have that?
21 MR. COUTO: 19408.2, as Ms. Wagner's pointing out.
22 It defines what a claiming race is and it says --
23 COMMISSION CHAIRMAN SHAPIRO: No, we don't have
24 the law.
25 MR. COUTO: I believe it's referenced in your

1 materials. But let me just walk through and then you can
2 comment.
3 The Business and Professions Code defines what a
4 claiming race is and it basically says all horses have to be
5 eligible to be claimed as -- I'm going to paraphrase because
6 I don't recall the last three words but, basically, eligible
7 to be claimed as defined by the Horse Racing Board rules.
8 Okay, so the rules are where sort of you define
9 what is or isn't a claiming race or claiming a horse. So if
10 you do not have a rule, currently, that says horses who are
11 not eligible to be claimed in these claiming races are
12 permitted, you sort of have a statute that looks like a bar
13 to it. So you have to, in my opinion, and I'd leave it to
14 Derry to advice, in my opinion that means that you have to
15 have a rule that is consistent with the statute, that
16 enables us to do this.
17 And we looked, believe me, we looked through the
18 Code as closely as we could, through the rules as closely as
19 we could to find the way to bootstrap this, and did not come
20 away with the warm and fuzzies that we found it.
21 COMMISSIONER CHOPER: Is there a rule that
22 authorizes optional claiming races?
23 MR. COUTO: No.
24 COMMISSIONER CHOPER: Well, then I don't
25 see -- then we've been running those for a long time,

1 contrary to what you've just said.
2 COMMISSION CHAIRMAN SHAPIRO: They're allowance
3 races.
4 MR. COUTO: They're allowance races.
5 COMMISSIONER HARRIS: Well, couldn't we deem these
6 to be whatever that is?
7 COMMISSION CHAIRMAN SHAPIRO: Well, again --
8 COMMISSIONER CHOPER: I guess my own notion is if
9 no one objects to it, and they want to do it, what's going
10 to happen?
11 COMMISSION CHAIRMAN SHAPIRO: Well, let me come at
12 it a different way and ask this to our Attorney General, can
13 we waive any portion of a rule that would allow us, the
14 industry to do this, while we go through the rule-making
15 process, because we deem it's in the best interest of our
16 industry, and it's in the best interests of the horses and
17 the care of the horses? Could we suspend a rule so it would
18 give us time to go through and clean this up?
19 DEPUTY ATTORNEY GENERAL KNIGHT: Is this working?
20 COMMISSION CHAIRMAN SHAPIRO: Yeah.
21 DEPUTY ATTORNEY GENERAL KNIGHT: As Drew points
22 out, part of the problem is it's a nomenclature issue. If
23 you call it a claiming race, we have a statute that defines
24 claiming race. It's a statute, it's not a rule. It defines
25 a claiming race as it means a race in which any horse

1 entered therein may be claimed in conformity with the rules
2 established by the Board.
3 It doesn't say any except ones that choose to
4 enter, that are not claimable.
5 So what you really have is a nomenclature issue
6 here. If you're going to call it a claiming race, at a
7 minimum you've got to have a rule change, in my view.
8 Now, perhaps you can come up with some other
9 nomenclature for this race, that's not a claiming race, and
10 that's maybe an alternative that the racing secretaries
11 could call it a come-back race, or whatever it's called.
12 But as soon as you call it a claiming race, you run afoul of
13 your own law which says a claiming race in which any horse
14 can be claimed.
15 And I assume the theory behind that is that the
16 betting public wants to know there's an even playing field
17 out there, they don't want ringers put in these races. And
18 I think that's the concern that you have to be aware of when
19 you're playing around with this.
20 But I think if you call it something other than a
21 claiming race, I don't have a problem with it. I mean,
22 there may be other issues --
23 COMMISSIONER CHOPER: Yeah, but this would apply
24 to all claiming races is the point, so that's hard.
25 COMMISSIONER AMERMAN: Yeah, it was stated in the

1 staff report that I think they talked with 11 other states,
2 you know, New York, Kentucky, et cetera, et cetera, et
3 cetera, and nobody has that kind of rule.
4 But did we go to the next step, which would be
5 what do you do to address this issue in your state? In
6 other words, can we learn from experience, from other states
7 across the country?
8 MR. COUTO: Well, I think one of the things that
9 we, as horsemen, are most proud of is sort of the initiative
10 and innovativeness of this Board and --
11 COMMISSIONER AMERMAN: That isn't my question. I
12 agree with you totally. What I'm asking is did we ask the
13 question about what they do under this circumstance, if
14 anything?
15 MR. COUTO: No one else is giving a horse time
16 off, a break, in any jurisdiction that we could find,
17 they're not doing that.
18 COMMISSION CHAIRMAN SHAPIRO: Can I ask our
19 Attorney General something? Could we call these
20 races -- could we call it an alternative claiming race, does
21 that -- if we, by a different nomenclature, we now rename
22 what was commonly known as claiming races, but the racing
23 secretaries could also write alternative claiming races, and
24 there's no limitation on how many they could write, would
25 that then suffice?

1 DEPUTY ATTORNEY GENERAL KNIGHT: Possibly, yeah.
2 MR. COUTO: Before we get too far down that road,
3 one of the problems is if you set up a separate category of
4 race is that you're now deeming that to be a new inventory
5 of horse. The fact is you may not have, at any given time,
6 20 horses or 15 horses that fit that condition, you may have
7 one or two. And so that race would essentially never fill.
8 The idea of this is that for --
9 COMMISSION CHAIRMAN SHAPIRO: You missed my point.
10 MR. COUTO: Okay.
11 COMMISSION CHAIRMAN SHAPIRO: I'm not trying to
12 write a race just for those horses, I'm saying that what we
13 used to call a claiming race is now going to be called an
14 alternative claiming race, and an alternative claiming race
15 would be the same kind of race only it would allow for
16 horses to be entered that were coming off a rest, and not be
17 claimed in that alternative situation.
18 COMMISSIONER CHOPER: Yeah, I'd like to make a
19 motion.
20 COMMISSION CHAIRMAN SHAPIRO: Yes, you may make a
21 motion.
22 COMMISSIONER CHOPER: I would like to move the
23 amendment, or the creation, or an adoption of a rule which
24 incorporates this idea, because I think that would really
25 push the statute quite a bit. I think the alternative is

1 not to do anything and just let the racing secretaries,
2 until someone objects, at least, let the racing secretaries
3 write the races with this proviso in it, and that is that
4 the horses that have not -- you know, under the conditions,
5 will not be subject to the claiming price.
6 COMMISSION CHAIRMAN SHAPIRO: Well, with --
7 COMMISSIONER HARRIS: You know, there's another
8 way to get there, too. We could have in a claiming race,
9 say it's a $25,000 claiming race, and the horses that have
10 not raced for 200 days, or whatever, but had raced for
11 25,000 or less in their previous start, they could be
12 entered for a higher price, if that was the issue that they
13 didn't want to lose them for 25, but they could be entered
14 for 50,000 or something. It's still a claiming race, it's
15 just you've got a variety of prices and then you don't have
16 to have a whole new rule.
17 MR. HARLOWE: Mike Harlowe, Oak Tree. With
18 respect to --
19 COMMISSIONER CHOPER: How does it take to -- oh,
20 excuse me. But we put it out for --
21 COMMISSIONER HARRIS: Six months. I'd like to get
22 the darn thing started, is the problem.
23 COMMISSION CHAIRMAN SHAPIRO: About six months.
24 Six months, that's the problem.
25 COMMISSIONER CHOPER: Well, we've waited this

1 long, we can wait another six months.
2 COMMISSION CHAIRMAN SHAPIRO: Mr. Harlowe, please
3 state your name.
4 MR. HARLOWE: Mike Harlowe, Oak Tree, I'm sorry.
5 I think we'd have a problem agreeing on the prices that we
6 would arrive at for that type of race. And our job is to
7 make a competitive race and I think that might create
8 situations where we don't have competitive racing.
9 Unfortunately, we'd have to do this for every
10 claiming race, so renaming that would basically abolish
11 claiming races, so we're not really, either, in favor of
12 that.
13 COMMISSIONER HARRIS: No, it wouldn't be every
14 race, just certain races. But the whole idea is you
15 just -- if you've got a really nice horse and you put it out
16 and come back, you're basically okay. The problem, the
17 horses that aren't coming back, it's not so much that they
18 get stopped on, there's horses, probably thousands of horses
19 around California that get stopped on, it's just the cost of
20 bringing it back is the problem. And I think there's just
21 some concern that when you spend the money to bring it back
22 and somebody claims it for 5,000 the first time back.
23 COMMISSION CHAIRMAN SHAPIRO: May I suggest that I
24 think we've all given it a valiant try, but I think what we
25 should do is initiate a rule-making process. Let's try to

1 expedite it as fast as possible to incorporate a new rule,
2 1632, or whatever the number was that was suggested by TOC,
3 and let's move forward in that direction.
4 Commissioner Amerman?
5 COMMISSIONER AMERMAN: In that regard, though,
6 could we really do some work to find out whether we really
7 have a problem in the first place?
8 COMMISSION CHAIRMAN SHAPIRO: Well, the question
9 is do we have an opportunity, not so much do we have a
10 problem. If you follow what's being suggested here, people
11 may say, you know, I wouldn't lose this horse -- I'm willing
12 to put in the five or ten thousand dollars it's going to
13 take me to bring him back, but now I can get a chance to
14 bring him back and not lose him right off the bat. So I'm
15 all for all the data. The question is I think it's more of
16 an opportunity than it is, you know, anything else. But
17 that's fine.
18 COMMISSIONER HARRIS: I think it would be good to
19 get the data, though, how many horses get claimed after a
20 180-day layoff. Actually, how many of them win, which is
21 not very many, probably.
22 But I think we're on the right track here, but
23 it's a lot broader subject.
24 COMMISSION CHAIRMAN SHAPIRO: I think Lucky JH
25 won.

1 COMMISSIONER HARRIS: No, I'm not worried about
2 Lucky JH, I'm worried about "Arnable Coach."
3 COMMISSIONER CHOPER: What the data won't show are
4 how many people who were deterred from bringing their horses
5 back, because they can be claimed.
6 COMMISSION CHAIRMAN SHAPIRO: So is that
7 acceptable to everybody, that we will institute a --
8 MR. JAMGOTCHIAN: I have a card on that, Mr.
9 Shapiro.
10 COMMISSION CHAIRMAN SHAPIRO: Okay, one second.
11 Is that acceptable to the Board, that we will
12 institute a rule-making process to try to effectuate this?
13 And, Jackie, you should work with TOC, and the racing
14 secretaries, and anybody else that wishes to work on that.
15 Mr. Jamgotchian, you have a comment on this agenda
16 item?
17 MR. JAMGOTCHIAN: Yes. Mr. Shapiro, I think that
18 for some reason you're motivated to push this, but you're
19 getting some direction that you're ignoring, from both
20 Commissioner Amerman and Commissioner Choper.
21 Because I think that this certainly could be
22 handled in a far different way. We don't need this rule.
23 In fact, I think the gentlemen on the Board have already
24 mentioned that no other states surveyed have such an
25 exception. So why?

1 The issue is and the way to handle this, and I'm
2 sure staff can figure this out, is to make it a house rule,
3 see if the racing secretaries can write a race with a
4 condition. And, gee, this Board hasn't been worried about
5 getting sued in the past, who's going to sue them.
6 But with regards to this as an owner, and I'm an
7 owner, obviously, what happens like in your case, Mr.
8 Shapiro, where you had that horse, "Comparcion," who you
9 dropped into a race that you wanted to lose? My question
10 is, you wouldn't have been able to lose your horse because
11 is this an option that you have as an owner, or are you
12 forced to run this horse protected? Maybe you don't want to
13 run the horse protected, but you want to lose the horse,
14 like you did?
15 So my question is, besides that as an owner, I
16 think it's restrictive to the owner. Additionally, there's
17 not a disincentive to give the horse the time off. I mean,
18 if it's a horse that's important to your stable, you're
19 going to give the horse the time off, that's the best
20 interests of the owner.
21 Why's the CHRB telling us what to do with our
22 horses? Hopefully, this problem's going to be solved with
23 the information, hopefully, that the synthetic tracks show
24 us. Maybe these horses are going to last longer and,
25 hopefully, this problem that they addressed is not really

1 the problem.

2 Once again, my concern is let's just make it a

3 house rule, let the secretaries write it, call it whatever

4 they want, non-claiming rule -- or non-claiming race, non-

5 winners within the last 180 days, who have been raced for

6 25,000 or less within the last year, or something like that.

7 But who's going to sue you for doing this?

8 COMMISSION CHAIRMAN SHAPIRO: Well, let me think

9 if I can think of anybody that would sue? I'm trying real

10 hard, excuse me, I've got to take a moment.

11 (Laughter.)

12 COMMISSIONER CHOPER: It's very simple, it's

13 someone who comes in second to a horse that ran without a

14 claiming price.

15 MR. JAMGOTCHIAN: I didn't say that, obviously.

16 COMMISSION CHAIRMAN SHAPIRO: Or they don't even

17 have to enter the race, Commissioner Choper. But let's move

18 on.

19 MR. JAMGOTCHIAN: All I'm saying, Mr. Shapiro, is

20 rather than ramrod this through, I think you ought to listen

21 to Mr. Amerman and Mr. Choper, because I think they're

22 telling you what the right way to do it is and I think we

23 ought to see if it works?

24 COMMISSIONER CHOPER: No, no, no, my right way was

25 to amend -- I thought the Chairman agreed is that we should

1 pursue amendment of the rule. That's the cleanest. It
2 takes six months, maybe less.
3 COMMISSIONER HARRIS: I'll call the question.
4 EXECUTIVE DIRECTOR FERMIN: Also, that a house
5 rule cannot supersede the law.
6 COMMISSION CHAIRMAN SHAPIRO: Of course not.
7 MR. JAMGOTCHIAN: Can I just clarify one other
8 thing, that I want to make certain, that this rule leaves it
9 to the option of the owner whether to run for a tag, or not
10 run for a tag, so you're not forcing anybody to do anything,
11 it's purely up to the owner, at their option. Thank you.
12 COMMISSION CHAIRMAN SHAPIRO: Okay, I'd like to
13 call for the question. All those in favor of initiating a
14 rule-making process to adopt this, all those in favor?
15 (Ayes.)
16 COMMISSION CHAIRMAN SHAPIRO: Anybody opposed?
17 It's passed.
18 Okay, the next item on our agenda is Item Number
19 3, discussion and action by the Board on the application for
20 approval to conduct advance deposit wagering of Churchill
21 Downs Technology Initiatives Company, dba twinspires.com,
22 for an out-of-state, multi-jurisdictional wagering hub from
23 October 19th, 2007 to December 31st, 2007.
24 I think we got that right this time. Jackie?
25 STAFF SERVICES MANAGER WAGNER: Jackie Wagner,

1 CHRB staff.
2 The application before you is from Churchill
3 Downs, running as Twinspires, and they're proposing to
4 operate as an ADW provider from October 19th, 2007 through
5 December 31, 2007. They're proposing to operate seven days
6 a week, 24 hours a day, with the exception of December the
7 25th.
8 They have presented that they have a pending
9 agreement with Bay Meadows and Golden Gate Fields if they
10 are able to obtain the ADW license approval.
11 This application is missing the horsemen's
12 agreement and the racing association contract.
13 We do have representatives from Twinspires here,
14 to answer any questions you may have.
15 COMMISSION CHAIRMAN SHAPIRO: Thank you. Then
16 what I would like to do, this has been a topic of
17 considerable discussion, is first I would like to find out
18 if there is an agreement with the horsemen in place, Mr.
19 Blackwell? Introduce yourself, please?
20 MR. BLACKWELL: Brad Blackwell, Churchill Downs
21 Technology Initiatives Company. As you know, I provided a
22 presentation on Twinspires at the last meeting, and I am
23 happy to report that since that time we have reached an
24 agreement with the TOC on a HUB rate which, in essence,
25 completes our application.

1 COMMISSION CHAIRMAN SHAPIRO: Thank you very much.
2 I'd like to hear from TOC, to just confirm that is the case.
3 MR. COUTO: Drew Couto, Thoroughbred Owners of
4 California. I am very pleased to advise the Horse Racing
5 Board that we have come to terms and we look forward to
6 Twinspires being one of our ADW partners in the coming year.
7 COMMISSION CHAIRMAN SHAPIRO: Thank you.
8 MR. COUTO: Thank you.
9 COMMISSION CHAIRMAN SHAPIRO: I must tell you,
10 behind the scenes, these parties have worked very hard to
11 accomplish this, and I want to personally thank them for all
12 of the hard work that Mr. Daruty, Mr. Couto, Mr. Blackwell,
13 Mr. Karstangian, and everybody else that worked so hard to
14 get this done.
15 I, personally, think it's terrific that we will be
16 able to welcome Twinspires as one of our ADW platforms,
17 which includes America Tab, and I'm hoping that it will
18 bring new revenue and new players to California racing.
19 Is there any comment from the Board, otherwise, I
20 would entertain a motion to adopt the licensing of
21 Twinspires for the period given.
22 COMMISSIONER AMERMAN: So moved.
23 COMMISSIONER MORETTI: Second.
24 COMMISSION CHAIRMAN SHAPIRO: Second. Let me see
25 if I have any other comment cards. I don't think I do.

1 MR. BLACKWELL: Mr. Shapiro, if I may?
2 COMMISSION CHAIRMAN SHAPIRO: Yes.
3 MR. BLACKWELL: I did want to point out that you
4 should be applauded for you involvement in getting this deal
5 done in the best interest of California horse racing and its
6 fans. And we do appreciate the opportunity to grow our
7 business through access to the California account wagering
8 market, and we are excited about and look forward to
9 offering our products and services to California residents.
10 And thank you to all.
11 COMMISSION CHAIRMAN SHAPIRO: Well, thank you, I
12 appreciate that. We're glad to have Churchill Downs back.
13 We hope that you'll stay and we hope that you'll help us
14 build California racing strong.
15 All those -- I'll call for the question. All in
16 favor?
17 (Ayes.)
18 COMMISSION CHAIRMAN SHAPIRO: Anybody opposed? It
19 is passed. Welcome to California, again.
20 Okay, moving right along. I'm going to take out
21 of order, I'd like to go to Item Number 5 at this point,
22 which would be discussion and action by the Board on the
23 application to conduct a horse racing meeting of Hollywood
24 Park Racing Association at Hollywood Park, commencing
25 November 7, 2007 and through November 22nd, inclusive.

1 And, Jackie, I see that we do have a horsemen's
2 agreement now in place between Hollywood Park and the TOC;
3 correct?
4 STAFF SERVICES MANAGER WAGNER: That's correct. I
5 was notified of that last night, and we do have a signed
6 copy of the horsemen's agreement.
7 Jackie Wagner, CHRB staff.
8 This application was presented before the Board at
9 its last meeting. The conditions remain the same, as was
10 reported last month.
11 We only have one outstanding item, that I'm aware
12 of right now, and that would be the ADW provider. I'm not
13 sure if that has been determined.
14 And we do have the CTT agreement and we have a
15 concessionaire license renewal that we're working on, that
16 are outstanding on this application.
17 I believe we do have representatives from
18 Hollywood Park here.
19 COMMISSION CHAIRMAN SHAPIRO: Okay, thank you,
20 Jackie.
21 What I would request is, if Mr. Liebau is here, I
22 would ask Mr. Liebau to come forward. I want to let you
23 know that there has been considerable discussion about the
24 ADW for this contract, for this provider. And, Mr. Liebau,
25 perhaps you could tell us what the status is of your ADW

1 situation for this Hollywood Park meeting?

2 MR. LIEBAU: Jack Liebau, from Hollywood Park. We

3 have been working with interested parties in trying to reach

4 an agreement or an arrangement that would be acceptable to

5 everyone.

6 Late last night we came to a meeting of minds

7 between the ADW providers, namely TVG, and those represented

8 by TrackNet. We have also in that mix is Hollywood Park and

9 Santa Anita.

10 We have submitted that arrangement to TOC for

11 their approval, with our apologies for the fact that it was

12 submitted last night. We have advised TOC that we do not

13 believe it's reasonable for them to respond for some period

14 of time, until they have had ample opportunity in which to

15 review the arrangement.

16 The arrangement is not just for the Hollywood Park

17 fall meet, it would cover a global arrangement for

18 California wagering through the end of the Hollywood Park

19 summer meet.

20 So what we have submitted to TOC, for their

21 consideration and their, hopeful, approval is sort of an ADW

22 peace for all parties for at least eight months, and that

23 model might prove to be successful and be used throughout

24 California. It basically provides for an exclusivity with

25 respect to broadcast rights that, at least at Hollywood

1 Park, would be enjoyed by TVG and also at Bay Meadows.
2 Presumably, HRTV would have exclusivity at Santa
3 Anita and Golden Gate Fields.
4 And the various wagering platforms of TVG and
5 TrackNet would be -- would have the opportunity, on a non-
6 exclusive basis, to take wagers from Hollywood Park, Bay
7 Meadows, Santa Anita, and Golden Gate Fields.
8 And those happen to be the meets that would run
9 between the opening of Hollywood Park and the closure of
10 Hollywood Park in the summer of 2008.
11 Again, this proposal is subject to the approval of
12 the Thoroughbred Owners of California and I assume, in due
13 course, they will have reviewed it and, hopefully, we'll
14 discuss it.
15 I think it's very important that the arrangement
16 be considered on a global basis, rather than any one element
17 in there, because it has taken an extensive amount of time
18 to get us where they are, and there's been a lot of give and
19 takes on every individual element in tradeoffs, and things
20 of that nature.
21 But I think we have developed a model, which at
22 least from those that have been involved in the discussion,
23 is acceptable to everybody.
24 And I can report that not everybody is happy, as
25 is normally the case when you have competing interests.

1 COMMISSION CHAIRMAN SHAPIRO: Well, you know, I
2 think there's probably been some rumor in the past that you
3 and I might not see eye-to-eye on every subject.
4 MR. LIEBAU: Really?
5 COMMISSION CHAIRMAN SHAPIRO: I don't know where
6 that comes from but --
7 MR. LIEBAU: Rumors to that effect.
8 COMMISSION CHAIRMAN SHAPIRO: We've had rumors.
9 But I have to tell you, I know because we have spoken, that
10 you have been working 24/7 to try and bring a global
11 solution here, which I think is absolutely terrific, if it
12 happens. And I think that you, along with the ADW
13 companies, all of them, TVG, XpressBet, TrackNet, and
14 YouBet, as well as the horsemen, everybody has been pulling
15 to try to find a solution, which you have been, I think,
16 spearheading. And we may be on the precipice of truly being
17 able to open up the wagering in California so that there is
18 non-exclusive wagering, but exclusive broadcasting, we
19 protect all interests. And, hopefully, it will result in
20 more revenues flowing to tracks and purses so that everybody
21 can be happy.
22 And I'm, personally, very appreciate of the
23 efforts.
24 MR. LIEBAU: Thank you.
25 COMMISSION CHAIRMAN SHAPIRO: Because it is not

1 done and because your race meeting is coming up, upon us, I
2 would like to propose to the Board, because TOC does deserve
3 the right to clearly understand what is being proposed, and
4 go through the numbers, I would like to approve -- to move
5 forward to approve the license application in front of us.
6 However, that be subject to an approval of the ADW portion
7 of it, which we should come back in about ten days and have
8 a special meeting, it can even be telephonically, if
9 necessary, to just resolve the ADW portion of your license
10 application.
11 Would that be acceptable to you?
12 MR. LIEBAU: Yes.
13 COMMISSION CHAIRMAN SHAPIRO: Okay.
14 MR. LIEBAU: I think, you know, where we sort of
15 are and it being football season, have sort of characterizes
16 this for a long time as if maybe we were in the red zone and
17 we've now gotten across and scored a touchdown, but we're up
18 in the review booth right now.
19 (Laughter.)
20 MR. LIEBAU: And that's where we stand. So I
21 mean, I don't know how long it's going to be before we get a
22 decision that's back on the field but, yes, that would be
23 acceptable.
24 COMMISSION CHAIRMAN SHAPIRO: I think that's the
25 most prudent thing to do so that everybody would have enough

1 time to understand it and go through it. And, hopefully, we
2 could then come back and just deal with that aspect of this
3 license application, if that would be acceptable to the rest
4 of the Board.
5 COMMISSIONER HARRIS: I think that's a good
6 outcome, although probably it can just be a telephonic
7 meeting, if it's just an up or down vote.
8 But at some point I think the Board needs an
9 educational session, and the industry as well, on the total
10 ADW subject, as far as how all the fees flow back and forth,
11 because it's really complicated and I don't -- I really
12 question if any of us, at all, really, truly understand it.
13 And there's going to be a lot of tinkering with it as it
14 goes along.
15 But it would be helpful, at some point, to have a
16 session where we really go through the ADW thing, and that
17 everyone states their case why the percentages going
18 different directions are correct, and what's the advantages
19 and disadvantages of exclusives, and non-exclusives, and the
20 whole thing.
21 COMMISSION CHAIRMAN SHAPIRO: Well, I think you're
22 absolutely correct, and that's why I jumped over Item Number
23 4, because I think that may be part and parcel of what Item
24 Number 4 on the agenda will be, and it's something that we
25 have to consider.

1 So if we're going to go in that direction, I would
2 like to hear if TOC is acceptable, if they find that
3 acceptable, as well?
4 And I see Mr. Broad is standing there, if you'll
5 just bear with a second.
6 COMMISSIONER CHOPER: Mr. Chairman, while he's
7 coming up there, we do have a meeting scheduled, I guess, 12
8 and 13 days from today, on November the 1st, so maybe we
9 could meet --
10 COMMISSIONER HARRIS: Tie into that, yeah.
11 COMMISSIONER CHOPER: And that would be a face-to-
12 face meeting.
13 COMMISSION CHAIRMAN SHAPIRO: That's the Strategic
14 Planning Committee meeting?
15 COMMISSIONER CHOPER: Yes.
16 COMMISSION CHAIRMAN SHAPIRO: I was actually going
17 to request that we defer that meeting, and I was going to
18 send out a memo. So why don't we hold off and not mix
19 things right here.
20 Mr. Couto?
21 COMMISSIONER MOSS: I had one question about the
22 dates, if I may?
23 COMMISSION CHAIRMAN SHAPIRO: Yes. The what?
24 COMMISSIONER MOSS: About the dates that are
25 listed here, if I could?

1 COMMISSION CHAIRMAN SHAPIRO: Sure. Are you
2 talking about the license application?
3 COMMISSIONER MOSS: Yeah.
4 COMMISSION CHAIRMAN SHAPIRO: Can I just finish
5 this part about ADW?
6 COMMISSIONER MOSS: Yeah.
7 MR. LIEBAU: Just as a point of clarification, the
8 approval that is being sought is solely for the Hollywood
9 Park 2007 fall meet, and the Horse Racing Board would not be
10 passing upon the arrangement that has been reached on a
11 prospective basis --
12 COMMISSION CHAIRMAN SHAPIRO: Absolutely.
13 MR. LIEBAU: -- because of the implications of the
14 new law and I think that clarifies the thing that Mr. Broad
15 wanted to make.
16 COMMISSION CHAIRMAN SHAPIRO: Let me make Mr.
17 Broad comfortable on the record. We are only dealing with
18 the Hollywood Park license application and, therefore, the
19 action we take is related to this license.
20 We may like that there's a global solution, but
21 that would have to be done with each application.
22 MR. BROAD: Right.
23 COMMISSION CHAIRMAN SHAPIRO: Thank you.
24 DEPUTY ATTORNEY GENERAL KNIGHT: Can I add to
25 that, I think it's important that the Board make it clear

1 that when they do pass upon the ADW applications, when they
2 ultimately come before you, that there may be provisions of
3 this agreement that may or may not be acceptable for the
4 purposes of ADW licensure.
5 I'm just concerned that the parties don't come
6 back to you and claim, well, we already have an agreement
7 and, you know, you --
8 COMMISSION CHAIRMAN SHAPIRO: Again, we are only
9 talking about the fall --
10 COMMISSIONER MORETTI: The agenda clear says
11 November 7th through December 27th, 2007.
12 DEPUTY ATTORNEY GENERAL KNIGHT: No, I understand,
13 but they're describing a global agreement here that would be
14 perspective.
15 COMMISSIONER MORETTI: That's separate.
16 COMMISSION CHAIRMAN SHAPIRO: But when we come
17 back for licensure. Again, I think that's going to blend
18 into Item Number 4.
19 Mr. Couto?
20 MR. COUTO: I believe that you requested -- Drew
21 Couto, Thoroughbred Owners of California. I believe you
22 requested to know if TOC was agreeable with the postponing
23 of the ADW issues 10 or 12 days, whatever it is. And, yes,
24 we are.
25 And I, again, appreciate all the work done by the

1 ADW companies and Mr. Liebau.
2 And I just want to make certain everybody
3 understands, we need time to evaluate it and make sure that
4 we're not carrying all the burden in this experiment.
5 COMMISSION CHAIRMAN SHAPIRO: Right, thank you.
6 MR. COUTO: Thank you.
7 COMMISSIONER MORETTI: Are you saying that you
8 might want more time than the ten days?
9 MR. COUTO: I'm not saying that, now. I'm
10 confident we can evaluate this within ten days, but I just
11 don't want anybody to think there is a done deal, yet. But
12 fingers crossed, it seems we're awfully close. Thank you.
13 COMMISSIONER MORETTI: Thank you.
14 COMMISSION CHAIRMAN SHAPIRO: Keep in mind, this
15 meeting starts November 7th, so they don't have much more
16 time.
17 COMMISSIONER MORETTI: I know, that's why I'm
18 wondering.
19 COMMISSION CHAIRMAN SHAPIRO: We're going to hear
20 the application, now, is there something left on ADW?
21 MR. BROAD: Well, there is. Barry Broad, and I'm
22 here on behalf of the Service Employees International Union.
23 Is what you're doing in ten days going to deal
24 with anything that is effective after January 1, 2008?
25 COMMISSION CHAIRMAN SHAPIRO: No.

1 COMMISSIONER HARRIS: No.
2 MR. BROAD: Okay, that's critical because there
3 are labor relations provisions that I intended to talk about
4 in Item Number 4, that become effective and are a condition
5 precedent, legally, to you granting any application. So
6 nothing regarding ADW, that you do any time, without -- can
7 affect anything after January 1, 2008, and I'll address
8 that. But I just wanted to make that clear.
9 COMMISSION CHAIRMAN SHAPIRO: Okay. I think it's
10 clear, and I hope we've been clear with you --
11 MR. BROAD: Okay.
12 COMMISSION CHAIRMAN SHAPIRO: -- that we are only
13 addressing Item Number 5, which is the Hollywood Park Fall
14 Racing Association's November 7th through December 22nd.
15 MR. BROAD: That's fine.
16 COMMISSION CHAIRMAN SHAPIRO: Now, if we can get
17 to the remainder of this application to see if there
18 are -- does anybody have questions? And Commissioner Moss?
19 COMMISSIONER MOSS: I just wanted to ask Mr.
20 Liebau, if I might, as I read the schedule, we're racing
21 until the 16th of December, and then there's four days off
22 until the Friday and Saturday, the 21st and 22nd, and then
23 there's another, well, five days off, until Santa Anita
24 opens.
25 And I'm just -- I mean, that seems a bit of a

1 strange way to do this. I mean, I think, as I remember, we
2 tried to talk about having a week off between the meets.
3 And I just -- I know the weekend, the Friday and Saturday,
4 is better than the Wednesday and Thursday, perhaps, but I'm
5 just asking about that.
6 MR. WYATTE: Eual Wyatte, Hollywood Park. It's a
7 good observation. This schedule, finishing on -- ending a
8 week on a Sunday and coming back and running a Friday and
9 Saturday was primarily to accommodate a new race, with a
10 cash call futurity, with a value of 750,000, some
11 sponsorship money from Mr. Ridom's Cash Call Company.
12 This was worked out between Hollywood Park, the
13 TOC, the CTT, and the California Horse Racing Board sometime
14 this past spring, as a cooperative effort, and everybody --
15 and some compromise to accommodate this race and sort of see
16 what it all means, that's how we got here.
17 COMMISSION CHAIRMAN SHAPIRO: Commissioner Moss,
18 when we met at Bay Meadows Racetrack, this was brought up
19 and we adjusted the dates so that they would be able to have
20 this extension and the special weekend of racing, and it was
21 decided and approved by the Board at the meeting that was at
22 Bay Meadows.
23 COMMISSIONER HARRIS: Yeah, I think it has a lot
24 of promise, too, that longer breaks possibly might work, but
25 I think a five-day break for Christmas, keeping in mind that

1 we could have other breaks throughout the year makes a lot
2 of sense.
3 COMMISSIONER MOSS: So this was already agreed on?
4 COMMISSION CHAIRMAN SHAPIRO: Yeah, our Board
5 already heard this and we approved the dates, and I don't
6 remember whether it was February or March and we met at Bay
7 Meadows, and we heard this, and this was discussed and it
8 was approved by the Board at that time.
9 COMMISSIONER MOSS: So is there -- just for my own
10 edification, is there one race for 750 and that is when, on
11 the Friday or the Saturday?
12 MR. WYATTE: That's on the Saturday.
13 COMMISSIONER MOSS: Okay, just puts people in a
14 bit of flux.
15 COMMISSION CHAIRMAN SHAPIRO: It's different.
16 COMMISSIONER MOSS: Yeah.
17 COMMISSION CHAIRMAN SHAPIRO: The hope was that
18 this might create a little special kind of holiday weekend.
19 And you might recall that even our good friends at Santa
20 Anita weren't thrilled with it, but they went along with it,
21 as well.
22 COMMISSIONER HARRIS: Yeah, I think we've got to
23 keep in mind, too, that we're getting -- racing is getting a
24 substantial amount of money from Cash Call to supplement the
25 purse on that race, which is pretty unusual for racing to

1 get substantially new money.
2 COMMISSION CHAIRMAN SHAPIRO: Okay, are there any
3 other comments about this application? If not, I will
4 entertain a motion -- I'll get to you, don't worry.
5 COMMISSIONER HARRIS: I move we approve it.
6 COMMISSION CHAIRMAN SHAPIRO: Okay, is there a
7 second?
8 COMMISSIONER ANDREINI: I'll second it.
9 COMMISSION CHAIRMAN SHAPIRO: Okay, public
10 comment. Mr. Jamgotchian, do you have a comment on this
11 application?
12 MR. JAMGOTCHIAN: Yes, Mr. Chairman, you know, I
13 don't understand why Mr. Liebau, Mr. Couto, Mr. Broad, nor
14 Mr. Wyatte are filling out cards. What's the penalty for
15 not filling out their card?
16 Anyway, with regard -- there's no penalty,
17 obviously, so you're just not enforcing the rules, I
18 understand.
19 COMMISSIONER MORETTI: They're pertinent to this
20 particular issue.
21 MR. JAMGOTCHIAN: Thank you, but I thought
22 everybody had to fill out a card.
23 COMMISSIONER MORETTI: You're public comment.
24 MR. JAMGOTCHIAN: With regards to this issue, I
25 was happy to hear about the love fest that you guys had

1 earlier on, with Mr. Liebau and you, Mr. Shapiro, because
2 last time I heard, you said that Mr. Liebau was killing
3 California horse racing by closing his racetracks. But,
4 hopefully, there is something --
5 COMMISSION CHAIRMAN SHAPIRO: You know, Mr.
6 Jamgotchian, I don't think I have ever said that, and I take
7 an offense to your portrayal of my saying that. Okay.
8 MR. JAMGOTCHIAN: Well, why don't I go through the
9 record and show you.
10 COMMISSION CHAIRMAN SHAPIRO: So, you know, why
11 don't you keep it on point.
12 MR. JAMGOTCHIAN: I'll go through the record next
13 meeting and tell you.
14 COMMISSION CHAIRMAN SHAPIRO: Do you have a
15 comment about this application?
16 MR. JAMGOTCHIAN: Yeah, I do. I think that if you
17 listen to what's happening between Mr. Liebau and Mr.
18 Charles, maybe the TOC, and some of the other groups, I
19 think you're going to see that the group of associations
20 seem to be pulling together, rather than being
21 fractionalized, like they've been for a long time. And I
22 think that it's proof that the CHRB, you guys, should step
23 back a little bit and see if the associations, who are the
24 ones that are losing the money, who are the ones that don't
25 have adequate stock, who are the ones who are having

1 difficult financial times out there, maybe they can resolve
2 the problems that this Board can't.
3 And I think Mr. Liebau, and Mr. Charles, and these
4 other people are highly capable, if they don't have the
5 impediment of the Executive Director and the Board.
6 COMMISSION CHAIRMAN SHAPIRO: Okay, Mr.
7 Jamgotchian, we are talking about the application to conduct
8 a horse racing meeting at Hollywood Park. Do you have a
9 comment about that?
10 MR. JAMGOTCHIAN: Yes, I fully --
11 COMMISSION CHAIRMAN SHAPIRO: Then make your
12 comment on that subject.
13 MR. JAMGOTCHIAN: Fine. I fully support their
14 application and their goal to allow racing fans to wager
15 freely in the State of California. Thank you.
16 COMMISSION CHAIRMAN SHAPIRO: Okay, I will then
17 call for the question. All those in favor of granting this
18 license, the license to Hollywood Park, albeit we will come
19 back and have to deal with just the ADW aspect of it, all
20 those in favor?
21 (Ayes.)
22 COMMISSION CHAIRMAN SHAPIRO: All those opposed?
23 It's approved.
24 If you want me to recraft that, is that what you
25 want?

1 DEPUTY ATTORNEY GENERAL KNIGHT: No, I'm just
2 concerned that if agreement is reached with TOC, do you need
3 to bring it back? I think the way it is, now, you'll have
4 to bring it back. I'm not sure that's your intention.
5 COMMISSION CHAIRMAN SHAPIRO: Well, I think the
6 Board, actually, probably wants to know what that is. And,
7 I mean, I don't know. I don't know.
8 COMMISSIONER HARRIS: It's something we can
9 approve --
10 COMMISSIONER MORETTI: So if we amend it to say
11 contingent upon their agreement?
12 COMMISSIONER HARRIS: Yeah, previously, we have
13 approved these licenses contingent on some subsequent event
14 happening, which is what --
15 DEPUTY ATTORNEY GENERAL KNIGHT: Fine, but that
16 wasn't how it was couched.
17 COMMISSION CHAIRMAN SHAPIRO: Well, we don't know
18 who the ADW providers are going to be and I think we want to
19 understand who the ADW provider is going to be.
20 DEPUTY ATTORNEY GENERAL KNIGHT: Well, I just
21 wanted to make sure you understood what I think you did. So
22 you're going to have to come back, again, and I'm just
23 concerned that if you don't want to do that, you could do it
24 another way.
25 COMMISSIONER HARRIS: Could we do that as an

1 option, that we --
2 DEPUTY ATTORNEY GENERAL KNIGHT: Well, you can
3 approve it contingent upon.
4 COMMISSIONER HARRIS: Approve it contingent on
5 that, and if we felt that we wanted further discussion, we
6 could still schedule a meeting.
7 DEPUTY ATTORNEY GENERAL KNIGHT: You can schedule
8 a meeting then, yeah. That might be an alternative, maybe a
9 preferable alternative.
10 COMMISSION CHAIRMAN SHAPIRO: Okay.
11 DEPUTY ATTORNEY GENERAL KNIGHT: Give you maximum
12 options.
13 COMMISSION CHAIRMAN SHAPIRO: Then let's do that.
14 So do you want to tell -- make the motion and then we'll
15 restate it?
16 DEPUTY ATTORNEY GENERAL KNIGHT: Well, I think
17 what you want to do is you want to approve their license
18 contingent upon them reaching agreement with TOC. Now, if
19 you --
20 COMMISSION CHAIRMAN SHAPIRO: And an ADW provider.
21 DEPUTY ATTORNEY GENERAL KNIGHT: Well, it depends
22 on what you want to do.
23 COMMISSION CHAIRMAN SHAPIRO: Providers.
24 DEPUTY ATTORNEY GENERAL KNIGHT: If you want to
25 later approve the ADW provider, then maybe you do need to

1 bring it back.
2 COMMISSION CHAIRMAN SHAPIRO: Well, I think we do
3 need to.
4 DEPUTY ATTORNEY GENERAL KNIGHT: That's what I
5 wanted to clarify, though.
6 COMMISSION CHAIRMAN SHAPIRO: I think we want to
7 understand what the ADW situation is. Because, I don't
8 know, maybe Mr. Liebau won't be able to reach agreement.
9 COMMISSIONER HARRIS: Well, I don't know if we
10 have much latitude at this point. If they haven't reached
11 an agreement with an ADW provider, what can we do about it
12 one way or the other.
13 COMMISSION CHAIRMAN SHAPIRO: Well, they could
14 possibly -- they could have a race meeting without ADW.
15 They could have a race meeting where there's multiple ADWs,
16 I don't know.
17 COMMISSIONER HARRIS: Well, I think -- I would
18 think what we should do is approve it contingent upon that,
19 however, the Board reserve the right to completely review it
20 at a meeting, and we'd schedule the meeting. If the
21 meeting's not needed, we don't have to have the meeting.
22 It's expensive to have meetings and get everybody down here,
23 and all that.
24 COMMISSION CHAIRMAN SHAPIRO: And I agree with
25 that, and I thought that's what we were doing. Do you feel

1 the motion encompasses that?

2 DEPUTY ATTORNEY GENERAL KNIGHT: I think you ought

3 to clarify it, if that's what you want to do, because I

4 don't think the record was that clear on that particular

5 point.

6 COMMISSIONER CHOPER: Could we delegate, to the

7 Chair and the Vice-Chair, the authority to review the

8 details of the agreement, and to bring it to the entire

9 Board, if that appears to be appropriate.

10 DEPUTY ATTORNEY GENERAL KNIGHT: Certainly.

11 COMMISSIONER CHOPER: Otherwise --

12 COMMISSION CHAIRMAN SHAPIRO: Or just approve it,

13 without bringing it to the Board.

14 COMMISSIONER CHOPER: That's right, you can do

15 either one. But if you think it's appropriate to bring it

16 to the entire Board, then do so. And if you don't, then

17 it's approved subject to your approving it.

18 DEPUTY ATTORNEY GENERAL KNIGHT: Yes, you can do

19 that.

20 COMMISSION CHAIRMAN SHAPIRO: All right, so why

21 don't we do that.

22 COMMISSIONER CHOPER: I'll move that we do that.

23 COMMISSIONER HARRIS: And at the same time we can

24 schedule a meeting, that may never happen, if the outcome is

25 that we do need a meeting.

1 COMMISSION CHAIRMAN SHAPIRO: Correct. So can we
2 have a second?
3 COMMISSIONER MORETTI: He moved it. Second.
4 COMMISSION CHAIRMAN SHAPIRO: All in favor of that
5 motion?
6 (Ayes.)
7 COMMISSION CHAIRMAN SHAPIRO: Okay. And I would
8 propose that we look to October 30th as a meeting date, in
9 case we need a meeting.
10 COMMISSIONER CHOPER: What day of the week is
11 that?
12 COMMISSION CHAIRMAN SHAPIRO: That's a Tuesday.
13 COMMISSIONER MORETTI: Telephonically.
14 COMMISSIONER CHOPER: Telephonically.
15 COMMISSION CHAIRMAN SHAPIRO: A telephonic
16 meeting.
17 COMMISSIONER HARRIS: Tuesday's bad for you?
18 COMMISSIONER CHOPER: I don't know. I mean, in
19 the afternoon I should be, unless I've got something else I
20 don't know.
21 COMMISSIONER MORETTI: But it's a phone call, we
22 could do it in the afternoon.
23 COMMISSIONER CHOPER: Yeah, a phone call.
24 COMMISSION CHAIRMAN SHAPIRO: Okay. All right, so
25 that's that agenda item.

1 So now we are on Agenda Item Number 4, which is
2 discussion and action -- first of all, I would like to
3 remove the word "action" from this item. There is not going
4 to be any action, there was never intended to be any action.
5 I apologize to anybody if they thought there was action on
6 Item Number 4. But notwithstanding, it reads, discussion
7 and action regarding the status of advance deposit wagering
8 and the feasibility of opening up ADW wagering to allow ADW
9 wagering providers to have access to all California signals
10 and any other matters related to ADW and exclusivity.
11 This issue is intended to be a discussion, and
12 it's somewhat of a follow up to what we discussed last time,
13 and that is how can we more effectively and better utilize
14 ADW for the benefit of the industry? How can we bring more
15 revenue to our purses and our tracks, and also make sure
16 that we are providing a fair and reasonable profit to our
17 ADW providers?
18 COMMISSIONER HARRIS: I think we also need to know
19 that we're providing a good service to our customers.
20 COMMISSION CHAIRMAN SHAPIRO: Absolutely.
21 Absolutely. And we also need to consider if we need to go
22 through a rule-making process to adopt rules, so that the
23 Board and the industry can determine what it is we want to
24 achieve out of ADW.
25 Now, towards that end, your comments, Commissioner

1 Harris, are that I think it's important that we all
2 understand ADW which, in my mind, is the most complex aspect
3 that we deal with in horse racing.
4 I must tell you that I wish I had a clearer grasp
5 on all the nuances. I don't, and I don't know who does.
6 But I think that what we want to do is to use this agenda
7 item to figure out how we can have an open dialogue, and we
8 can throw around what ideas we should be looking for.
9 Should we be looking for non-exclusive wagering
10 and exclusive broadcasting? Is that in the best interest,
11 does it create the most revenues?
12 I may personally feel one way, but I could be
13 wrong, and so there may be a better way to build this
14 mousetrap.
15 And so this item is for us to embark on how to do
16 that. And I really invite everybody to help us craft how we
17 can go about doing that. And maybe we should have a special
18 meeting on just this issue, so that we can understand ADW,
19 and we can then adopt or move forward procedures and rules
20 so that we can use it to the maximum benefit for our
21 California racing opportunities.
22 Anybody have any comments on that?
23 COMMISSIONER HARRIS: No, I think we continually,
24 we need to get a lot of material out there. We get so much
25 things piecemeal, at this rate and that rate, and if we

1 could get somebody that could put together a nice book of
2 all the different aspects on who gets what, and what all
3 these terms are, and where at least we can go into this
4 other meeting that we know we've done some homework going
5 into that.
6 COMMISSION CHAIRMAN SHAPIRO: Well, I agree with
7 that. What we do know is that, thankfully, the Legislature
8 and the Governor have enacted AB 765, and that law will have
9 some changes to it, in how we approach ADW.
10 And so I think we have to look at the context of
11 that law and then we need to understand what all of these
12 terms mean.
13 Unfortunately, when we hear HUB rates, source
14 market fees, host fees, imports, exports, it gets very
15 confusing. And we, as a Board, aren't involved in the rates
16 and the economics, so we don't necessarily see the whole
17 picture.
18 There may be more handle, but is more handle in
19 fact flowing to purses and to tracks? It's something that I
20 think we, as a Board, need to understand and we need the
21 guidance of the industry stakeholders to help us.
22 So I would ask that if any of the ADW companies
23 have an idea, or the tracks, or the horsemen, of how best to
24 embark on doing this. Because as we're now moving forward,
25 we're going to have to re-license these ADW companies.

1 And I think what we may have to look at is a
2 short-term license renewal, so that if we are going to want
3 to adopt new rules and regulations, under the law, we can
4 get those rules and regulations in place so that we can make
5 them part of what we license.
6 Is that not correct, Derry?
7 DEPUTY ATTORNEY GENERAL KNIGHT: Yes.
8 COMMISSION CHAIRMAN SHAPIRO: Okay. And it's my
9 understanding that if we wanted to do something that is -- I
10 don't know what the example would be. But we may need to
11 adopt a rule or a regulation and, therefore, the Board may
12 have to look at a short-term renewal of its existing
13 licenses, and then come back and license them with the new
14 rules that the industry, and ourselves, may adopt.
15 DEPUTY ATTORNEY GENERAL KNIGHT: That's my
16 understanding. Well, let me just be very candid. I think
17 that the exclusivity issue is one that calls out for a
18 regulation. And so depending on how that comes out, that
19 presents that issue very squarely, that you're going to have
20 a timing issue that if the -- although you may have a
21 voluntary agreement that may correspond with where you end
22 up, anyway, I don't know, it just depends on how it all
23 plays out.
24 COMMISSIONER HARRIS: I'm not clear on the
25 exclusivity issue, if that's going to be a vehicle of the

1 ADW or of the track, when we license a track, if at that
2 point we could have a covenant in that license saying you
3 cannot have exclusive agreements with certain ADW --
4 DEPUTY ATTORNEY GENERAL KNIGHT: That's a very
5 good point. Actually, I think the issue comes up in both
6 the context of the track and the ADW providers. Because,
7 you're right, because the tracks have to agree with it as
8 well.
9 I mean, they have to be -- if it's a mandate,
10 they're going to have to be mandated that they will make
11 their signal available to all ADW providers, for example.
12 COMMISSIONER HARRIS: Yeah, because we're going to
13 license ADW providers, but their real strength comes from
14 their agreement with a given track, when we license them.
15 COMMISSION CHAIRMAN SHAPIRO: So we have to look
16 at that if that's what we wanted to do, what do we -- what
17 rules, and what do we have to amend to be able to do that?
18 DEPUTY ATTORNEY GENERAL KNIGHT: Well, I think
19 that your idea of having the policy discussion is a very
20 good one, and then depending on where that goes we'll have
21 to evaluate the -- I was just throwing the -- I'm sorry, I
22 jumped into probably the hottest issue, but we've obviously
23 been aware that that was a potential, and that will take
24 some sort of regulatory action.
25 COMMISSION CHAIRMAN SHAPIRO: Okay.

1 DEPUTY ATTORNEY GENERAL KNIGHT: We haven't
2 focused on exactly where that has to occur.
3 COMMISSION CHAIRMAN SHAPIRO: So is there anybody
4 in the audience, any of the ADW companies, or any of the
5 stakeholders? I see Mr. Nathanson. Would you like to
6 comment on this, Mr. Nathanson?
7 MR. JAMGOTCHIAN: You know, just --
8 COMMISSION CHAIRMAN SHAPIRO: I'm asking for the
9 stakeholders at this time.
10 MR. JAMGOTCHIAN: Yeah, okay, that's fine.
11 COMMISSION CHAIRMAN SHAPIRO: Thank you, Mr.
12 Jamgotchian.
13 MR. NATHANSON: David Nathanson, TVG, thanks for
14 having me here, today.
15 First of all, I agree with the Commission that not
16 all the issues need to be regulated, some obviously may.
17 I think it's important, and this is, obviously,
18 all subject to the TOC's approval, that for the first time
19 in really a long time all the major parties have come
20 together and, hopefully, we will work with the TOC to find
21 an agreement, to really test what non-exclusivity of
22 wagering means for the market.
23 And I think it's a little presumptuous for
24 anybody, including myself, to assert that any one direction
25 is in the best interest of racing, until we actually see the

1 numbers, until we actually see the results that the rising
2 tide lifts all boats here.
3 So we're more than happy to participate in any
4 process, certainly in this process, and in any subcommittee
5 to explore those numbers. And I give you, certainly, TVG's
6 participation to share all of our learnings in the
7 marketplace, in the past, so that we can compare what we've
8 seen in terms of results and statistics in the past and
9 what, if this new model does get approved, in conjunction
10 with the TOC, what exactly that would mean for horse racing,
11 for better or for worse.
12 But I would encourage the Board to look at the
13 facts, first, and explore -- use this opportunity as a test
14 to really explore what is, in fact, in the best interest of
15 this State and the racing community.
16 COMMISSION CHAIRMAN SHAPIRO: So how do we get
17 access to the facts? I mean, I hear what you're saying, I
18 don't disagree with it. But when you say the facts, look at
19 the facts, what facts are you suggesting that we look at?
20 MR. NATHANSON: Well, I think that, again, subject
21 to the TOC's approval of the agreement, that in principle
22 TrackNet, TVG, Hollywood Park have agreed to, we'll really
23 be able to test two very different environments.
24 For the past two years we've operated in a very
25 different environment than the one we're proposing for the

1 next eight months. And, certainly, just by looking at
2 CHRIMS, alone, just as one example, I think we'll be able to
3 see some real statistics, if you look at the base of the
4 growth of wagering or lack thereof, for that matter, for any
5 of the tracks and the effects that television has or may not
6 have at all. I think these are all things we need to look
7 at and look at completely objectively to see what is in the
8 best interest of racing.
9 COMMISSION CHAIRMAN SHAPIRO: I tend to agree with
10 you, okay. But, all right, that is assuming that --
11 assuming the parties have this global agreement, all right,
12 at Hollywood Park, and the global agreement then continues
13 for the next, whatever it is, eight months, are you
14 suggesting that the Board should basically stand -- sit
15 still and allow a period of time, and then come back and
16 look at it, and decide whether we should adopt any rules or
17 regulations, once we've looked at the whole eight months, or
18 are you saying just Hollywood Park; what is your view?
19 MR. NATHANSON: Well, I wouldn't be so
20 presumptuous as to instruct the Board what to do.
21 COMMISSION CHAIRMAN SHAPIRO: I'm not asking you
22 to instruct us. Help us.
23 MR. NATHANSON: But I do hearken on Mr. Harris's
24 suggestion that there should be a sub-committee formed to
25 explore what are the facts that the Board and the industry

1 should be looking at, objectively, to see the value of
2 wagering exclusivity versus non-exclusivity, and the results
3 it has both on purses, in terms of participation, in terms
4 of handle. There's a number of statistics that I think will
5 be relevant to the discussion.
6 And, again, we're happy to participate in any way
7 the Board sees fit.
8 COMMISSION CHAIRMAN SHAPIRO: Okay.
9 MR. NATHANSON: Thank you.
10 COMMISSION CHAIRMAN SHAPIRO: Thank you. I'm
11 going to ask, then, a few people if they still wish to come
12 forward on this issue. Cathy Christian, you have a card, do
13 you still wish to speak? That was a no, I think.
14 Okay, David Widda something?
15 COMMISSIONER HARRIS: That's Nathanson, I think.
16 COMMISSION CHAIRMAN SHAPIRO: Is that yours? You
17 need to fix your printing, David.
18 STAFF SERVICES MANAGER WAGNER: David Heiman.
19 COMMISSION CHAIRMAN SHAPIRO: John Heiman. John
20 Heiman, are you going to speak?
21 STAFF SERVICES MANAGER WAGNER: Oh, John Heiman.
22 David Nathanson, excuse me.
23 COMMISSION CHAIRMAN SHAPIRO: Okay, Ron --
24 MR. BLONIEN: No.
25 COMMISSION CHAIRMAN SHAPIRO: Thank you.

1 COMMISSIONER HARRIS: Who's watching the store at
2 TVG?
3 COMMISSION CHAIRMAN SHAPIRO: Okay. Barry Broad?
4 MR. BROAD: Yes.
5 COMMISSION CHAIRMAN SHAPIRO: Darn.
6 MR. BROAD: Well, as long as we're doing the naval
7 metaphors of ships, people, or whatever rising with the
8 tide, SEIU represents the ordinary seamen here, in this
9 situation. And the last time, historically, that ADW was
10 done, there was a kind of implicit promise that they would
11 get jobs out of it. And that didn't happen because the HUBS
12 moved to Oregon.
13 Well, in this round, with this new piece of
14 legislation, a very, very strong, prescriptive limiting-on-
15 your-authority type language went into the bill that says,
16 and I quote, "the Board shall not approve an application for
17 an original or renewal license as an ADW provider unless the
18 entity, if requested in writing by a bona fide labor
19 organization no later than 90 days prior to licensing, has
20 entered into a contractual agreement with that labor
21 organization that provides all of the following."
22 And specifies a neutrality card check agreement in
23 the language of labor law, which is an agreement that
24 requires the employer to be neutral in any labor organizing
25 effort and to -- and provides a method by which majority

1 status can be determined, and bargaining can commence
2 through the use of authorization cards that are -- show that
3 a majority of the people in the proposed bargaining unit
4 wish to be represented by the union.
5 That goes into effect January 1, it's self-
6 executing, doesn't require you to do regulations. And
7 whether you do regulations or not regarding it, which you
8 certainly can do, because of the history that happened here,
9 SEIU will be enforcing this very, very vigorously.
10 And I was in these negotiations, for many, many
11 hours with the parties, to get to this bill, which was not
12 easy. And while neither SEIU, or the Teamsters, or the
13 Jockey's Guild have a position on this exclusivity issue, I
14 was chagrined by the extent to which some of the parties
15 that were in those negotiations, and knew better, were
16 prepared to pretend that exclusivity wasn't discussed.
17 Because it was. In fact, it was the gravamen of the whole
18 negotiation.
19 And there's language in the bill that references
20 exclusivity, and I think you better be very careful, whether
21 you like it or not, about how you deal with exclusivity,
22 because the Legislature contemplated in this that
23 exclusivity would be permitted. Although, clearly, the deal
24 that was struck allows the horsemen to veto that, if they
25 don't wish to agree to it.

1 So the parties were supposed to retain freedom of
2 contract in this area.
3 Now, you are a Board with plenary authority, and I
4 used to be on a Board with even more plenary authority,
5 because it was constitutional in its basis, but when the
6 Legislature acts, it acts to restrict that authority. So
7 it's plenary, unless the Legislature takes it away.
8 And what concerned me about the exclusivity thing,
9 after doing this legislative stuff for 25 years, is people
10 were starting to go back on the deal before the deal even
11 got signed, and that concerns me.
12 And I want to make sure because of the once
13 burned, twice shy view of my client here, SEIU, that
14 everybody understands, the Board, the parties, everybody,
15 that we're not planning to play any games here, and we don't
16 want anybody else playing any games.
17 And if they do play games over this labor stuff
18 here, we will be in court, we will be seeking injunctions,
19 we will shut down anybody that tries to move forward with
20 ADW without a card check agreement.
21 So, I mean, I don't want to seem like a mean guy,
22 and I'm not, but -- and I certainly, I'm sure if you talk to
23 anyone, deserve a fair amount of credit for helping move
24 this negotiation to the point where they got a deal on ADW
25 in the Legislature, and I did everything I could to push

1 that deal, including making lots of people unhappy who were
2 my friends, and allies, and my not friends, and not allies,
3 and whatever, because I knew a deal had to be done.
4 But I, singularly, in the horse racing industry,
5 it seems as though the long knives are out five seconds
6 after the handshake is given. And I don't know why that's
7 the case, somehow we don't have that in agriculture, believe
8 it or not, with labor and the farmers, or in the trucking
9 industry, or any other places. But somehow, in horse
10 racing, it gets very dysfunctional.
11 And all labor is asking for is the deal that it
12 got. And we're asking the Board to enforce that deal
13 through the power that you have.
14 So my only point on exclusivity is it scared me
15 that so many people, from what I understand of your last
16 month's meeting, could fail to point out to you -- you were
17 not parties to that negotiation, you're not expected to know
18 what went on in that negotiation. But I think people had a
19 moral obligation to say, hey, here's what went on, so that
20 you guys didn't step off into the precipice of controversy
21 over something that where you were not informed of what was
22 going on.
23 Now, whether that binds you or not, legally, you
24 can have an argument, you know, whatever. I have my
25 opinion. You know, other people will have theirs. But

1 there is another dimension, and that's the dimension of what
2 goes on in the Legislature that involves the crafting of
3 these deals.
4 And there's enough wars in horse racing that we
5 don't need to start another one right after we've made a
6 deal to fix the problem.
7 COMMISSION CHAIRMAN SHAPIRO: Can I ask you a
8 question, because I want to make sure that everybody
9 understands what you're saying, okay.
10 MR. BROAD: Okay.
11 COMMISSION CHAIRMAN SHAPIRO: At the last Board
12 meeting, and I was not part to the deal that you were just
13 referencing, I threw out my views, that I felt that as we
14 were looking at re-licensing the ADW companies that was upon
15 us. And for three years I had been one espousing that, gee,
16 I think we should be non-exclusive wagering.
17 And every time our AG said to me, you issued a
18 license, you can't change the rules in the middle of the
19 game.
20 So with, now, the re-licensing going to be upon
21 us, I was throwing out the idea of, hey, maybe now's the
22 time that we should look at making non-exclusive wagering.
23 Okay, so that's, essentially, what I threw out.
24 Unknowingly, that set off a tremendous
25 controversy, that I was being accused of trampling on a deal

1 that had been made somewhere in Bakersfield, or somewhere
2 else, that I wasn't even part of. And even though I had
3 talked to a few people and they said, no, there's no problem
4 with your doing that, it then hit me like, you know, cold
5 water in the face, that wait a minute, he's going off to
6 upset the apple card on the deal.
7 Now, since then there have been lots of
8 discussions and you are sitting here in front of us saying,
9 and I want to be sure all the Commissioners understand it,
10 that you believe that when this new law was enacted, that
11 there was an implied deal that we, the Board, would not go
12 forward and insist on any non-exclusive wagering for ADW.
13 Is that correct?
14 MR. BROAD: That is my sense of it.
15 COMMISSION CHAIRMAN SHAPIRO: That's your --
16 MR. BROAD: It was not -- it was not -- listen,
17 I've been in plenty of meetings, in fact on other bills.
18 Let's take that thing, the safety reins --
19 COMMISSION CHAIRMAN SHAPIRO: Well, let's just
20 stay with this, Barry.
21 MR. BROAD: Well, I just want to say something,
22 there's two things that happen in the Legislature when these
23 deals get cut, okay. Sometimes you can't reach an agreement
24 and you say let's punt it to the administrative agency,
25 let's let them decide. That's what we did with the safety

1 reins, right. It says, you know, you guys have to approve
2 the safety reins, unless you find that they're not as safe
3 as conventional reins. That's punting it to the CHRB.
4 That's not what went on in these negotiations.
5 The negotiations, the thing that was the stopping -- a
6 problem in the negotiations, is that TOC wished to be a
7 party to the original negotiations. If Drew wants to
8 disagree with me, he can. But wished to be a party to the
9 original negotiation, exercise more than its veto power
10 under the Interstate Horse Racing Act, but be in the
11 discussion at the front end.
12 TVG, on the other hand, wished to have the right,
13 not a mandate, but the right to maintain exclusivity in its
14 agreements. And there was discussion, truly ad nauseam,
15 over this point, in which folks were going back and forth
16 for hours over this question of exclusivity.
17 Now, are you sure we can still negotiate for
18 exclusivity?
19 At the end of the day, the agreement was that TVG
20 would have the right, if the other parties agreed, and the
21 Horse Racing Board was not really -- it was a business deal.
22 If, as a business deal, the parties agreed that exclusivity
23 made economic sense to them, that they could agree to it.
24 And TOC got what it wanted in terms of having an
25 enhanced voice in the original discussion, it wasn't just

1 going to be between a track and an ADW provider, they were
2 going to be a part of that discussion. That was the essence
3 of the deal.
4 Nobody was saying we're maintaining silence in
5 this bill, and the CHRB can go deal with this exclusivity
6 thing any way it wanted. I do not believe, I firmly do not
7 believe that that's what was going on.
8 Now, as I look at the bill, the bill has language
9 in it that references terms of exclusivity. Certainly, that
10 means that you can -- you can infer, in the traditional way
11 that I think that we look at legislative intent, to say that
12 the Legislature contemplated that the parties would be able
13 to negotiate exclusivity.
14 And so I believe that --
15 COMMISSION CHAIRMAN SHAPIRO: Would or could?
16 MR. BROAD: Could. And that you could not, as a
17 result of that, logically, that you cannot prohibit, as a
18 condition of licensing, the parties from at least trying to
19 negotiate that. Whether they can or can't reach that
20 agreement is another question.
21 If you put it as a conditioning of licensing and
22 you say they can't do it, they never get to a negotiation,
23 they're not allowed to discuss that matter.
24 And that, I think, to me, violates the essence of
25 what that agreement was.

1 Now, let me just say this, if I was your attorney,
2 Mr. Knight, I might say, well, I'm looking at this and I
3 don't know if I agree with this, and da, da, da, da, da, da,
4 da. Because that's what his job is, to defend the limit of
5 your power.
6 I'm suggesting that your power was limited by this
7 bill.
8 But leaving that aside, there's the other
9 question, which is do you need this kind of a headache. In
10 other words, do you want to create, to speak in the
11 vernacular, what happened, a bunch of cirrus over -- over
12 this thing.
13 COMMISSION CHAIRMAN SHAPIRO: They're not going to
14 understand that.
15 MR. BROAD: What?
16 COMMISSION CHAIRMAN SHAPIRO: They're not going to
17 all understand that.
18 MR. BROAD: Well, you'll translate for them.
19 Anyway, and I think that's the real issue. And maybe you
20 can find an argument that you're not technically bound by
21 it, but it will, I assure you, create a firestorm of
22 controversy because it's inconsistent with this deal that
23 was struck in the Legislature.
24 COMMISSIONER CHOPER: Are you saying -- excuse me?
25 MR. BROAD: Yes, sorry. I'm sorry.

1 COMMISSIONER CHOPER: You've provided a lot of
2 information, but you originally started talking about the
3 necessity to have a collective bargaining agreement and an
4 election, and so forth.
5 MR. BROAD: Right.
6 COMMISSIONER CHOPER: Now, you've switched, now.
7 MR. BROAD: Right.
8 COMMISSIONER CHOPER: To the exclusivity issue.
9 Am I right about that?
10 MR. BROAD: Well, I didn't switch, what I was
11 trying to say, and I responded to the Chairman's question,
12 but --
13 COMMISSIONER CHOPER: No, no, I'm not criticizing.
14 MR. BROAD: -- is that I was concerned with the
15 way the discussion gravitated so quickly about exclusivity
16 that a similar gravitation would occur with regard to the
17 labor issues. And I just want to make sure that, from our
18 perspective, the labor issue is crystal clear.
19 COMMISSIONER CHOPER: But do you have any -- any
20 word, any position on the exclusivity issue?
21 MR. BROAD: The labor organizations are agnostic
22 about that.
23 COMMISSIONER CHOPER: Yes.
24 MR. BROAD: We just want to enforce the deal.
25 COMMISSIONER CHOPER: I understand.

1 COMMISSIONER HARRIS: Well, the only thing is I
2 don't understand. Obviously, the Board would be limited by
3 whatever the bill says, but it's bothersome if you're
4 saying, additionally, you're limited because we had a
5 backroom deal, and even though it isn't reflected in the
6 deal, that's the deal. I mean, I don't think the Board can
7 be really restricted to backroom deals, the law's whatever
8 it is.
9 COMMISSIONER MORETTI: I didn't hear you say that.
10 COMMISSIONER CHOPER: No, that's absolutely
11 correct, but I think he's trying to explain what the
12 language means and so forth.
13 MR. BROAD: Well, I'm trying to explain what the
14 language means and I'm suggesting that -- that you're not
15 bound by backroom deals, but this is a deal that passed the
16 Legislature, and it does has the language that it has, and
17 it doesn't -- and I believe it has some impact and some
18 limiting affect on your power. That's my personal opinion.
19 Whether exclusivity is good or bad, or good or bad
20 for -- I mean, Mr. Shapiro has said to me, I think
21 exclusivity is back for the jockeys, for the pari-mutuel
22 clerks, and I am willing to grant him that that may be true.
23 But whether it's true or not, I believe, you know,
24 at least from my perspective, we live and die by our word,
25 and that's what we have to keep, whether it's a good deal or

1 a bad deal.

2 COMMISSIONER MOSS: Can I ask one small question?

3 MR. BROAD: Yes.

4 COMMISSIONER MOSS: Would you explain card

5 checking to me?

6 MR. BROAD: Okay. What card check is, is that

7 typically in a labor relations context, under the National

8 Labor Relations Act, where you have a secret ballot election

9 system, there's sort of two things that have evolved. You

10 can do it by secret ballot election or you can do it by card

11 check agreements.

12 In a secret ballot election system, you get ten

13 percent of the workers to sign cards, and then that triggers

14 a secret ballot election.

15 In a card check system, you get 50 percent plus

16 one of the workers to sign an authorization card, and if the

17 cards are legitimate, you know, they're bona fide, then the

18 union is deemed to be the majority collective bargaining

19 representative of the workers, and the parties commence to

20 negotiate. But you don't need a secret ballot election

21 because you've gotten the card check. That's the system.

22 The neutrality element is that the employer

23 basically does not campaign, if you will. The employer just

24 says, you do what you want, I have no opinion in this

25 matter, whatsoever.

1 COMMISSIONER HARRIS: Does the NLRA have oversight
2 over ADW? I know that there's been some rulings that
3 racetracks were exempt, for some reason, which I didn't
4 agree with, I don't think, from the NLRA, but it seems to me
5 like ADW companies, since they operate nationally, and all
6 this, should really be under the NLRA. And I would much
7 prefer their agency be in charge of any labor disputes
8 versus CHRB, because we really don't have the expertise in
9 labor law that other agencies may have.
10 MR. BROAD: I understand that. It's our position,
11 because they're accepting pari-mutuel wagering, that they're
12 part of the wagering aspect of horse racing, and so they are
13 within the area where the National Labor Relations Board has
14 not taken jurisdiction.
15 COMMISSIONER CHOPER: Does this bill, and I am
16 just looking, I finally found what you're referring to, but
17 does it provide, in your judgment, that even if the
18 employees, it seems from what I read quickly, are outside
19 the State of California --
20 MR. BROAD: Yes.
21 COMMISSIONER CHOPER: -- that the Legislature can
22 control the kind of election that can be held in Nebraska?
23 MR. BROAD: Yes. Because it controls the
24 license -- it's not saying -- it's perfectly within their
25 power to say I don't want to do this, but then they just

1 don't get a license here. And since the -- it's like no big
2 deal, if they don't want to do it, they don't get a license.
3 The original legislation made them move the HUBs
4 to California. And if that is within the jurisdiction of
5 the Board, this certainly is.
6 COMMISSIONER CHOPER: No, I wasn't talking about
7 the jurisdiction of the Board, but the ability of the State
8 to cast an extraterritorial effect on the labor negotiations
9 in other states, which may very well have contrary rules.
10 MR. BROAD: Well, I don't think that those ADW
11 providers -- well, first of all, it says that if they have a
12 collective bargaining relationship already, it doesn't cover
13 them.
14 COMMISSIONER CHOPER: You mean with people in
15 another state?
16 MR. BROAD: That's right. So our contention would
17 be that if the State of California could demand that the
18 HUBs be located here, and that the Legislature could
19 actually say, as a condition of licensing, move your HUB
20 within our territorial area, that it can, as an option,
21 certainly place this requirement on them.
22 COMMISSIONER CHOPER: No, I think you're right. I
23 think the premise, though, is itself subject to some real
24 dispute, and that is that the State can require an
25 interstate business, in order to do business in this

1 State -- now, it may be because of the nature of the
2 industry, and so forth, that the interest is strong enough
3 to permit, you know, what they call generally a
4 discrimination against interstate commerce.
5 MR. BROAD: You know, probably we should just do a
6 law school thing on this. But I think the counter argument
7 is that the reason the National Labor Relations Board never
8 took jurisdiction over this, and arguably baseball, but the
9 reason they never did horse racing was because it's so
10 comprehensively regulated by the states.
11 And the similar thing would be alcohol. Alcohol
12 and cigarettes can be comprehensively regulated by the
13 states, including interstate commerce, for the reason that
14 it's treated as a special state concern.
15 So it would be in those line of cases that say,
16 you know, all that.
17 COMMISSIONER CHOPER: I understand. May I suggest
18 something --
19 MR. BROAD: Sure.
20 COMMISSIONER CHOPER: Or I really don't mean to
21 suggest it, but throw this out as a possibility. This is
22 complicated stuff. If there were some way in which before
23 our next meeting, I mean the Chairman talks about educating
24 us in some way, that you, in English, were able to present
25 your points in respect to what this bill provides for labor.

1 Right, I mean, that's what you're talking about?
2 MR. BROAD: Right.
3 COMMISSIONER CHOPER: And if you would circulate
4 copies, at the same time, to the people who obviously may
5 have a different point of view, so that we could get the
6 benefit of their arguments in respect to it, that might help
7 us a great deal in trying to understand what was going on,
8 particularly if they're not -- as I say, if they're not with
9 too much legalese. That's the one thing I think might be
10 helpful.
11 MR. BROAD: Okay.
12 COMMISSIONER HARRIS: I'm not sure, either, how
13 many people we're talking about here and what states they're
14 in. Because as I understood it, there aren't really that
15 many people employed in these jobs.
16 MR. BROAD: There's not a lot of people and
17 they're in Oregon.
18 COMMISSIONER HARRIS: Well, how about like YouBet,
19 aren't they here?
20 MR. BROAD: Well, we're going to find out when we
21 send the letters out, asking to negotiate the card check
22 agreement.
23 COMMISSIONER CHOPER: But I think that would be
24 helpful.
25 And the other thing that troubles me is when the

1 Chairman, at the last meeting, talked about exclusivity and
2 non-exclusivity, and he just talked about it again, today,
3 no one seems to -- hey, let me put it this way, yours is the
4 first criticism that I've heard of that notion. And I don't
5 know whether you want to get into that.
6 MR. BROAD: Well, they're all chicken, they get
7 intimidated because you guys regulate them.
8 COMMISSION CHAIRMAN SHAPIRO: Well, okay.
9 MR. BROAD: So, you know, I'm not really in that
10 place.
11 COMMISSION CHAIRMAN SHAPIRO: Barry, hold on.
12 Again, I want to make it really clear, I certainly didn't
13 intend -- because, yes, I'm getting the firestorm, okay. I
14 had no intentions of trampling on any legislative intent.
15 My reading of the legislation does not -- and,
16 again, we were not there, we were handed this bill, it
17 doesn't say that this Board could not adopt rules that would
18 require that all of our racetracks offer ADW on a non-
19 exclusive wagering basis. And I think you and I agree on
20 that, it does not say we can't, okay.
21 MR. BROAD: It doesn't prohibit it, no.
22 COMMISSION CHAIRMAN SHAPIRO: Okay, it doesn't
23 prohibit it.
24 Now, as what the other Board members need to hear
25 is that you have gotten up there very articulately, and very

1 genuinely, and you've said, hey, it was a deal.
2 Now, there are people who were in the same room as
3 you, who feel differently, and that's where the confusion
4 comes in. In fact, if you just turn around, you will see
5 one.
6 All right. So what I think is important for
7 everybody up here to hear is, Barry, thank you for your
8 comments, now let's hear from --
9 MR. BROAD: Can I just say one last thing?
10 COMMISSION CHAIRMAN SHAPIRO: One second. Let us
11 hear, now, from somebody else who was in the room, that may
12 have a different perspective. That's all I'm trying to do.
13 MR. BROAD: Okay.
14 COMMISSION CHAIRMAN SHAPIRO: And let me just tell
15 you, one of the things I would like you to think about is
16 maybe what we should have is a joint informational hearing
17 that would be education for our Board, and maybe we should
18 do it with the Senate GO Committee, and do a joint
19 informational hearing so that Legislators and ourselves can
20 understand the complexities of this issue. Maybe that's
21 what we should do is try to do it that way.
22 So I throw that out, okay.
23 Mr. Daruty, you were in the room, do you have any
24 views on this?
25 MR. DARUTY: Yes, Scott Daruty, with TrackNet

1 Media. I was involved for months, and months, and months in
2 the negotiations and meetings over the new account wagering
3 bill, and that participation included spending all night,
4 the last night prior to the agreement, drafting up the
5 language of the bill that was agreed upon by the parties.
6 I'll also say that I don't believe there was a
7 single person involved in those discussions who was as
8 focused, or more focused, I should say, on the issue of
9 exclusivity. I think there were people who were as focused,
10 but believe me, it was a very, very big issue in my mind.
11 And there was no agreement, there was no backroom
12 deal, as described by Mr. Broad. I feel that absolutely and
13 I know other parties, who participated in those meetings,
14 feel the same way.
15 COMMISSION CHAIRMAN SHAPIRO: So are you saying
16 that there was no agreement that there would be -- that the
17 Board could not move forward with non-exclusive wagering?
18 MR. DARUTY: Well, there were certainly many
19 discussions about exclusivity, and the parties, over the
20 months of these negotiations, discussed everything from the
21 extreme of certain parties advocating a bill that expressly
22 outlawed exclusivity, other people advocating a bill that
23 expressly said exclusivity was okay.
24 What the negotiation ultimately led to was a
25 compromise, in which exclusivity was neither prohibited or

1 permitted, but just sort of we, you know, punted on the
2 issue.
3 COMMISSIONER CHOPER: You mean mandated, you don't
4 mean permitted?
5 MR. DARUTY: It was not mandated and it was not
6 prohibited.
7 COMMISSIONER CHOPER: Yeah, that's a very
8 different thing.
9 MR. DARUTY: And I think that, first of all,
10 knowing what I know about this Board and about California
11 law, I don't see how we could have ever thought that we
12 could take the authority away from this Board, certainly
13 without expressly saying in the statute that that's what we
14 were doing. Otherwise, this Board has that authority.
15 So, no, there was, in my opinion, no agreement. I
16 know others in the meeting feel the same way as I do. So it
17 was just a disagreement or a misunderstanding, I suppose.
18 COMMISSION CHAIRMAN SHAPIRO: All right.
19 MR. DARUTY: If it was that important of an issue,
20 certainly it would have been expressly addressed in the
21 statute.
22 COMMISSION CHAIRMAN SHAPIRO: Okay, were there
23 others in that, that wish to -- Mr. Liebau, are you going to
24 opine?
25 COMMISSIONER AMERMAN: Could somebody explain, for

1 my benefit, what meeting we're talking about, in the first
2 place?
3 COMMISSION CHAIRMAN SHAPIRO: Perhaps, there was a
4 meeting that was held, I guess it was in Bakersfield?
5 COMMISSIONER HARRIS: Yeah, beautiful downtown
6 Bakersfield.
7 COMMISSIONER AMERMAN: Well, that's a nice
8 location but what --
9 COMMISSIONER HARRIS: Yeah, it was a wonderful
10 location, but I think it was called by Senator Flores. No
11 one on the Board was there, but a lot of the different
12 players were there.
13 MS. CHRISTIAN: Mr. Chairman, maybe I can try and
14 clear that up. I was also present at the meeting, Cathy
15 Christian, representing TVG.
16 COMMISSION CHAIRMAN SHAPIRO: Okay.
17 MS. CHRISTIAN: John Hindman, TVG's general
18 counsel, who was also there, and there have been several
19 discussions about this since.
20 Let me just clear up one thing. First of all, no
21 one, especially from TVG, is saying that the Horse Racing
22 Board is bound by a backroom deal that people made extra-
23 legally, or outside of the Legislature, or any other
24 process, that's simply not the case.
25 It is shorthand when people say "a deal is a

1 deal," is because the legislative process, as you all know,
2 involves compromise, and deal making, and trying to satisfy
3 the interests of the parties so that a bill can go forward.
4 And the bill, whether Mr. Daruty characterizes it
5 a compromise, a deal, the bill represents what the parties
6 agreed would be acceptable. Had that bill not been crafted
7 the way it was, there would have been opposition to the bill
8 in the Legislature and it would never have gotten out of the
9 Legislature.
10 So instead of that impasse, when we talk about "a
11 deal," and those of you who have been in the legislative
12 process know what we're talking about is something that the
13 parties were agreeable to, that the author of the bill, and
14 those Legislators who were interested in crafting a solution
15 were all happy with, and that's what we're talking about.
16 And that final night of negotiations, over what was
17 acceptable to the parties in the bill, occurred in
18 Sacramento, not in Bakersfield.
19 And most of the people in this room, who have
20 commented, were sitting in that room.
21 In subsequent conversations, it's become very
22 clear that some people are rejecting reality in saying that
23 there were no understanding that the words of this bill, and
24 specifically I'm referring to Section 19604 --
25 COMMISSIONER CHOPER: What page is that on, of

1 that bill?

2 MS. CHRISTIAN: Well, I have the PDF version, it's

3 on page 8.

4 COMMISSIONER CHOPER: Maybe it's the same one.

5 MS. CHRISTIAN: B --

6 COMMISSIONER CHOPER: Well, hold on.

7 MS. CHRISTIAN: -- 1.C.

8 COMMISSIONER CHOPER: No, that's not on our thing,

9 B.1.

10 MS. CHRISTIAN: If you go past, Commissioner, the

11 definitions, there's a whole definitions section that ends

12 with number 14, right after that, subdivision B .

13 COMMISSION CHAIRMAN SHAPIRO: Where is it, top of

14 page 9?

15 COMMISSIONER CHOPER: The top of page 9. "Wagers

16 shall be accepted according to the procedures."

17 MS. CHRISTIAN: Yes, yes.

18 COMMISSIONER CHOPER: Okay.

19 MS. CHRISTIAN: Subdivision B.1.C. I'm looking at

20 the enrolled version, right.

21 And what that section says is that --

22 COMMISSION CHAIRMAN SHAPIRO: Are you looking at

23 C, as in cat?

24 MS. CHRISTIAN: Capital C.

25 COMMISSION CHAIRMAN SHAPIRO: Okay.

1 COMMISSIONER CHOPER: Can you read us the
2 language, first, and then tell us what you think of it?
3 MS. CHRISTIAN: Thank you, I was going to ask
4 permission to do that very thing. The agreement referenced
5 in subparagraph B, which is a written agreement with the
6 racing association conducting the races on which the wagers
7 are made, we're now talking about in-state wagers, "the
8 agreement references in subparagraph B shall have been
9 approved in writing by the horsemen's organization
10 responsible for negotiating purse agreements for the breed
11 on which the wagers are made in accordance with Interstate
12 Horse Racing Act," and the citation is there, "regardless of
13 the location of the ADW provider, whether in California or
14 otherwise, including, without limitation, any and all
15 requirements contained therein with respect to written
16 consents and required written agreements of horsemen's
17 organizations to the terms and conditions of the acceptance
18 of those wagers, and any arrangements as to the exclusivity
19 between the horse racing association or fair and the ADW
20 provider."
21 It then goes on to say that the Interstate Horse
22 Racing Act is to be viewed exactly as it is written.
23 The purpose of that statute was to include in the
24 terms to be negotiated, and subsequently approved by the
25 horsemen, terms relating to exclusivity. That was the

1 understanding of everybody in that room.
2 And I disagree, respectfully, with Mr. Daruty,
3 when he says there was no agreement. That was the agreement
4 as to how that statutory provision was to be read.
5 Certainly, it is my understanding that that is what the
6 author believed, that is what Senator Flores believed, and
7 that is what the parties agreed that this provision means.
8 That has also been expressed to the Governor's
9 Office that that is what this provision means.
10 It did exactly what Mr. Broad said, it allowed the
11 horsemen to participate, as they have been asking to
12 participate, in a direct way, in those terms, and it left
13 open for negotiation that term, specifically, exclusivity.
14 And with all due respect to the Board, and
15 Commissioner Choper, I haven't known you for more than a few
16 minutes, but I used to be counsel to this Board in a
17 previous life, the comment that the Board plenary authority
18 must be conditioned on what the Legislature construes the
19 statute.
20 And in this case, in order to achieve something
21 that was acceptable to all parties, the Legislature agreed
22 that exclusivity would be a negotiated term.
23 The reason, Mr. Chair, just to make clear, that we
24 did not get up and argue this point at the last meeting, was
25 because until you said what you said about where you wanted

1 to go, we weren't sure where the Board was going to go. And
2 I actually got up, if you recall, and ask if you were going
3 to engage in a rule-making process, or some other kind of
4 process.
5 And it would be our position that the statute does
6 not even give you the authority to create a rule that is
7 contrary to what the statute says.
8 But in any event, if you're going to proceed at
9 all to discuss this by way of Board action, it would have to
10 be in the regulatory context.
11 COMMISSION CHAIRMAN SHAPIRO: Can you tell me
12 where this says that if the Board -- and I'm not advocating
13 that this is what the Board should do -- but where does this
14 language say that the Board, given the context of all of the
15 other issues that are in the Horse Racing law, where the
16 Board couldn't determine it's in the best interest of
17 racing?
18 I see that this language, and I'm not a lawyer,
19 okay, and I wasn't there, so I need to look to Derry, and
20 any other of the great legal minds here --
21 COMMISSIONER CHOPER: Well, the fact you weren't
22 there is irrelevant. I really mean, I think the notion
23 we're bound by what they said.
24 COMMISSION CHAIRMAN SHAPIRO: By the law.
25 COMMISSIONER CHOPER: In the law.

1 COMMISSION CHAIRMAN SHAPIRO: I agree.
2 COMMISSIONER CHOPER: Not by deals or --
3 COMMISSION CHAIRMAN SHAPIRO: I agree, what the
4 law says.
5 COMMISSIONER CHOPER: We don't have a legislative
6 history in California, do we?
7 DEPUTY ATTORNEY GENERAL KNIGHT: Well, you do, of
8 sorts, yeah.
9 COMMISSIONER CHOPER: Well, then that, too, we can
10 look at, the printed material they put out after they're
11 done proposing the law and passing it.
12 COMMISSION CHAIRMAN SHAPIRO: Okay, but --
13 COMMISSIONER CHOPER: But so I just want to be
14 clear, I don't think we should pay any attention to that.
15 COMMISSIONER HARRIS: Well, isn't it clear the law
16 does say that the horsemen's organization does have the
17 right to agree or not agree with exclusivity? See, that's
18 sort of the thinking of the Board, I guess the Board
19 wouldn't really be -- wouldn't really come in and overrule
20 what was an agreement between the horsemen and the ADW
21 providers, anyway.
22 MS. CHRISTIAN: And I agree with that,
23 Commissioner Harris. It is important for the Board to
24 separate, I think, what the Legislature intended in terms of
25 your responsibility for licensing ADW providers and ensuring

1 that they meet the qualifications that the Legislature
2 expects.
3 Beyond that, there is a negotiation that goes on.
4 This statute specifically contemplates a negotiation will go
5 on with licensed entities, that is horse racing associations
6 that are licensed by this Board to conduct race meets, ADW
7 providers that are licensed by this Board to enter into
8 those negotiations.
9 Obviously, a negotiation can't produce a contract
10 that is contrary to law. But it is our position that this
11 law, as it is written and is effective January 1st,
12 specifically provides for a market term negotiation on the
13 issue of exclusivity, as well as any number of other items.
14 And as long as that -- that that is between the parties,
15 what works best with respect to that market negotiation.
16 And so when you decide to license an ADW provider,
17 if they meet the minimum qualifications, I suggest to you
18 that you have no basis for denying a license because they
19 may subsequently enter into a contract that you would prefer
20 they didn't. As long as the law allows them to do that,
21 that this statute means, not just implicitly, it means that
22 the Legislature has said what the rules of the game are
23 going to be with respect to that negotiation, and it would
24 not be for the Board to substitute its judgment for the
25 Legislature with respect to that.

1 And so in that sense, you know, we expected,
2 actually, to have more of this conversation in a
3 subcommittee environment, as was suggested at the last
4 meeting, and have taken some time to go back and read the
5 statute have discussions with others, so we didn't throw all
6 this out at the last meeting.
7 I'm happy to answer any questions, as are other
8 representatives of TVG. But we couldn't disagree more with
9 what Mr. Daruty said.
10 COMMISSIONER CHOPER: Understand.
11 MS. CHRISTIAN: Okay.
12 COMMISSIONER CHOPER: And I certainly appreciate
13 what you said. I'd like to say to you the same thing I said
14 to Mr. Broad, I think you ought to submit something in
15 writing, and I think the gentleman who took the opposite
16 view, so we know at least there are two views on this, maybe
17 more, ought to do so as well.
18 And we have the Attorney General's Office, we have
19 our own legal representation here, we'll read it and we'll
20 try to understand what was said.
21 Sometimes what appears on first blush, as we know
22 is not the ultimate answer.
23 And, Mr. Broad, I wish you'd do the same thing
24 with the labor provision. And if you don't have a dog in
25 this other fight, I mean, maybe you want to stay out of that

1 one. But that's up to you, obviously, I can't tell you what
2 to do.
3 COMMISSION CHAIRMAN SHAPIRO: He has a dog, don't
4 worry. Okay, thank you. Thank you.
5 MS. CHRISTIAN: Thank you.
6 COMMISSION CHAIRMAN SHAPIRO: Is there anybody
7 else who was party to those discussions, that might want to
8 weigh in on that, before we get off to something else?
9 MR. COUTO: Drew Couto, Thoroughbred Owners of
10 California. I'll come back from my alternate reality.
11 I don't question anybody's sincerity in what they
12 came away with in that meeting, and what appears to be is
13 people came away hearing what they wanted to hear, because
14 these issues were so emotional to their position.
15 I can only share with you what was our perception,
16 and it's equal in the sense to the rest of them.
17 What I perceived or thought we were negotiating
18 was that the issue of exclusivity would be one to be
19 negotiated by the parties, that particular issue.
20 As you know, as Scott pointed out, initially, I
21 think, TOC's position was we were trying to prohibit
22 exclusivity. On the other side was an entity trying to
23 mandate exclusivity. And we ended up in the middle, saying,
24 let's leave this to be negotiated by the parties.
25 Where I think we have gotten into an unfortunate

1 disagreement is some are now, in my opinion, extending this
2 agreement that we would negotiate the issue of exclusivity,
3 into some prohibition against the Horse Racing Board
4 exercising its authority, as set forth in the statute.
5 And what we have said and, hopefully, not in an
6 inflammatory way to the rest of those who are engaged, is we
7 kept the language from the prior statute with regard to the
8 Horse Racing Board's role in this, we kept the same language
9 from the old statute, to the new statute, to reflect that
10 the Horse Racing Board continued to have a role of
11 oversight.
12 What exactly that was, I do not believe we had any
13 agreement as to what that was, nor do I think I can
14 tell -- I can tell anyone, honestly, that at the time we did
15 this, we were not anticipating that the Horse Racing -- by
16 agreeing to something, the Horse Racing Board would come
17 back in and rewrite the law, I don't think that's what we
18 were saying.
19 But we were, at least myself, Craig Fravel, Scott
20 Daruty, and others thought that we were leaving the Horse
21 Racing Board's role to be what it was and continue to be
22 what it was.
23 COMMISSIONER CHOPER: Do you think that included
24 the ability to require non-exclusivity?
25 MR. COUTO: I don't really know, because I didn't

1 think much about it at the time and, honestly, I haven't
2 thought much about it now.
3 And we also made the point, when we recently met,
4 that under the Interstate Horse Racing Act, which is also
5 referenced and also controls these, that by virtue of
6 Federal law, the Horse Racing Board plays a role in all of
7 this, as well. And in particular, the language referring to
8 exclusivity in the statute in front of you is lifted
9 verbatim from the Interstate Horse Racing Act.
10 So, you know, I don't -- it's unfortunate that
11 here we are arguing about what we did or didn't agree to. I
12 will say that I will agree with those who assert that we
13 agreed between the parties we would negotiate the term of
14 exclusivity. But to the extent anyone is asserting that it
15 stood beyond that to preclude the Horse Racing Board from
16 doing what it is empowered to do, both under Federal and
17 State law, that's where we would have to draw the line.
18 And I don't think that we ever anticipated that
19 you would be precluded from looking at these, and reviewing,
20 and making decisions that the Board thought was in the best
21 interest.
22 And, again, I say that it was not -- despite what
23 some may assert, it was not part of a devious plan to go
24 around the agreement, I just don't think it was contemplated
25 at the time, other than you would continue to have a role.

1 And I'll brief that, if you'd like, and submit
2 that as well.
3 COMMISSIONER CHOPER: Well, I don't want to set
4 the rules, I mean, maybe it's not done this way. But I
5 think it would be helpful to have. I mean, you have an
6 opposite point of view from the one that we just heard a
7 moment ago. And, you know, this is complicated stuff,
8 whether you're a lawyer or not, in trying to make -- I mean,
9 this is not great prose what Legislatures enact, so that
10 it's perfectly clear. And, you know, that gives lawyers a
11 chance to make a living, too, so I can't argue against that.
12 But in any event, I think that would be very
13 helpful. And I think our counsel will weigh in, also, as to
14 what this looks like.
15 Because it's very difficult, without any
16 preparation, to comprehend everything that's being said and,
17 anyway, you get the point.
18 MR. COUTO: Thank you.
19 COMMISSION CHAIRMAN SHAPIRO: Thank you very much.
20 Mr. Liebau?
21 MR. LIEBAU: Jack Liebau, from Hollywood Park.
22 Under the existing circumstances, I'd just like to say I
23 wasn't at the meetings and I don't care what they said.
24 And I really question whether it's worthwhile to
25 go to this issue, if you don't have to go to this issue.

1 Why have a divisive thing, where we got people up
2 here saying he said that, no, she said that, and then if by
3 chance this model, that came to fruition last night is
4 approved by the Thoroughbred Owners of California, why do we
5 even get to the issue of exclusivity.
6 COMMISSION CHAIRMAN SHAPIRO: I couldn't agree
7 with you more. I couldn't agree with you more. If this
8 model is approved, frankly, I don't think we do have to go
9 through this.
10 MR. LIEBAU: We don't have to have fights that we
11 don't have to have. And in the end, I don't know whether
12 there's language, and I had to chuckle about Commissioner
13 Choper's remark about the language being somewhat fuzzy,
14 because my colleague, Mr. Fravel, is not here, and at one
15 point in time he was bragging to me about how well that was
16 drafted.
17 (Laughter.)
18 COMMISSIONER CHOPER: Well, everything is
19 relative, you know.
20 MR. LIEBAU: But maybe it was well drafted, and
21 then nobody -- it can be interpreted differently, and that's
22 what lawyers are good at.
23 But in any event, I really wonder if this
24 conversation or discussion is really worthwhile, in light of
25 the fact that maybe the parties, as Mr. Couto has said, have

1 negotiated a model that provides for exclusivity with
2 respect to broadcast, and non-exclusivity with respect to
3 wagering. And you know, frankly, as far as Hollywood Park
4 and Bay Meadows are concerned, we think that that is in the
5 best interest of racing and it shouldn't be changed.
6 COMMISSION CHAIRMAN SHAPIRO: Well, I think you're
7 absolutely right, and I think we ought to end this
8 discussion on that note, and hope that what we will find is
9 that the parties can come to an agreement amongst
10 themselves, and that we would be able to avoid having to get
11 into any further conflict on this issue.
12 COMMISSION CHAIRMAN SHAPIRO: Mr. Jamgotchian,
13 you'll have the final word on this.
14 MR. JAMGOTCHIAN: Well, I'm shocked to be sitting
15 in a room with a Jack Liebau as a peacemaker. I'm having a
16 hard time understanding that.
17 But, you know, Mr. Chairman, members of the Board,
18 the ADW system does not work in California, obviously,
19 that's why you're trying to correct it.
20 But I'd like to bounce something off the Board,
21 because it seems to me that -- and I think that Mr. Choper
22 maybe has the direction, is that the CHRB needs to take the
23 lead here, and needs to give guidance and direction.
24 Because, really, it's ADW that you guys realistically
25 control. And you need to retain the power, because I don't

1 think that you want backroom deals being made that, A, you
2 aren't aware of and, B, that negatively affects the
3 industry.
4 So here's my question or here's my plan, and I'd
5 like you to at least offer your thoughts. Since the CHRB
6 licenses an association, why don't they retain the rights to
7 the broadcast. And then, since they have the rights to the
8 broadcast, they hire a production company to produce the
9 broadcast, i.e., the races, and then sells the broadcast to
10 any ADW player that wants to buy it, at which point any
11 wagerer in the State of California, or the United States,
12 can then go to that ADW provider, who's acquired a license
13 from the CHRB, who does the broadcast, then we don't have
14 any problems. Do we?
15 COMMISSIONER CHOPER: That's certainly one
16 scenario.
17 MR. JAMGOTCHIAN: I mean --
18 COMMISSIONER CHOPER: But the question, I get -- I
19 mean, I'm hearing different things at different times. But
20 I don't know anything about this, to begin with.
21 MR. JAMGOTCHIAN: Well, that's an hones answer.
22 COMMISSIONER CHOPER: But I want to do the -- but
23 our job is to do the right thing for the industry.
24 And the question I would ask is if it is true that
25 the racing associations and the horse owners agree on a

1 particular system, the question is should the Board seek to
2 supersede that agreement and say, no, this is not an
3 acceptable agreement. You could certainly hypothesize some,
4 in which it just seemed to be undesirable, even though it
5 was agreed to, it would be contrary to the policy of the
6 furtherance of the industry.
7 And that's the question that we have to decide,
8 what --
9 MR. JAMGOTCHIAN: And that's totally within your
10 purview.
11 COMMISSIONER CHOPER: It is, but you got to be
12 pretty much informed before you overturn the agreement of
13 what would appear to be, at first blush, the parties who
14 represent the competing interests. I mean, the TOC, and the
15 ADWs, I mean, they're two powerful groups.
16 And you're represented by the TOC.
17 MR. JAMGOTCHIAN: Well, I'm not, personally,
18 but --
19 COMMISSIONER HARRIS: You are.
20 COMMISSIONER CHOPER: But anyway, but then the
21 question is what are the reasons for us coming in and
22 saying, no, that agreement in some way is shortchanging the
23 best interests of the industry?
24 COMMISSIONER HARRIS: I don't think we have the
25 ability to really do -- to really need to do that. Because

1 we got two groups who are negotiating in good faith, and
2 they've come up with a model. It may well be that over time
3 changes, what's a good model this year is a different model
4 next year, or we look at the numbers and it doesn't work.
5 But I think it's safer to really have the horsemen
6 and the ADW providers come up with a deal they agree on,
7 rather than us superimposing, okay, this is the way it's got
8 to be.
9 COMMISSIONER CHOPER: What's wrong with that? I
10 mean, that --
11 MR. JAMGOTCHIAN: My concern with that is, is that
12 you need a judge to make the decision. Who's the judge? Is
13 the judge going to be the CHRB, or is the judge going to be
14 the associations, or the ADW companies, or the TOC? Who's
15 the judge?
16 COMMISSIONER CHOPER: Well, ordinarily, you know,
17 in our system, what you're doing when you have two groups
18 together like that come to a -- it's the same groups that
19 produced this legislation, but with all -- with all
20 apologies to Mr. Fravel, I would hope that your contracts
21 are less ambiguous, less subject to different interpretation
22 than this.
23 And what you mean in a contract, of course, is
24 very different than what those who were in that room there
25 meant what the legislation produced. This is the

1 Legislature's product. The other is your product. And if
2 they come to it, it seems to me there's a strong presumption
3 in favor of not overturning them.
4 COMMISSION CHAIRMAN SHAPIRO: Well, Mr. Choper,
5 again, I would really like to leave it at what Mr. Liebau
6 said. It's a complex issue. If we have to have an
7 informational hearing where we can learn more about it, we
8 can understand it better, we will then understand what role
9 the CHRB should play, and exactly what laws we are to follow
10 based on the legislation and the laws that have been
11 enacted.
12 And, therefore, I think that we should move on to
13 the next agenda item.
14 MR. JAMGOTCHIAN: Oh, yeah, wait a second, I'm not
15 finished, and you're taking my time, I didn't speak for the
16 allotted time.
17 But my only concern is that this Board -- that
18 this Board needs to retain control of ADW. Because if the
19 parties aren't going to reach agreement --
20 COMMISSION CHAIRMAN SHAPIRO: You've got two
21 minutes left.
22 MR. JAMGOTCHIAN: That's fine, I don't need two
23 minutes. If the parties aren't going to reach agreement, we
24 need a judge to determine who and what is going to be done
25 for ADW, because there's a lot of money at stake, a lot of

1 money for the horsemen at stake that's being totally
2 ignored.
3 You guys, the Board, maintain the final decision
4 and you've got to retain that right. If they can't make a
5 deal, I think you ought to consider my model, where you,
6 essentially, buy a production company, or lease a production
7 company, or employ TVG or any production company, take those
8 rights and then release them as a franchise to anybody who
9 wants to take bets lawfully.
10 And if you're not in that mode, you should be,
11 because I'm willing to bet that there won't be an agreement.
12 COMMISSIONER CHOPER: No, no, let me say this, if
13 there's no agreement, then we're on a different territory
14 altogether, right.
15 MR. JAMGOTCHIAN: So I'm just saying consider
16 that.
17 COMMISSIONER CHOPER: Now, yours is an interesting
18 thing, I think we should consider it.
19 COMMISSION CHAIRMAN SHAPIRO: Okay, thank you.
20 All right, we're going to go to --
21 COMMISSIONER MORETTI: Could I ask to that point?
22 COMMISSION CHAIRMAN SHAPIRO: Yes.
23 COMMISSIONER MORETTI: I think it was a good idea
24 that Professor Choper asked some of the various parties to
25 give us a brief -- a brief bulleted, in English, outline of

1 where -- as I read 755, I said, oh, there's labor got theirs
2 this time, TOC's got theirs, yes, Richard. And, you know,
3 then the takeout in all of the issues, and then there are
4 certain things in which the CHRB is mentioned.
5 But I think it would also be important, Derry, if
6 you could give us an overview of what is anticipated, now,
7 now that we have this new law, or we will in January, what
8 are the CHRB's responsibilities toward it. Because,
9 obviously, this is a law, it will be subject to
10 interpretation, but we have a law that we have to follow,
11 now, so maybe we can do that.
12 COMMISSION CHAIRMAN SHAPIRO: And so, Derry,
13 you'll do that, and perhaps the parties will at least give
14 us their interpretations that the law provides.
15 All right, I'd like to move to public comment. I
16 have two cards, Rod Blonien.
17 MR. BLONIEN: Thank you, Mr. Chairman, members.
18 Last week our Governor signed AB 241, by Assemblyman Price,
19 which is a bill that I've been working on for a substantial
20 period of time with Ron Charles, and John Amerman has been
21 cheerleading from time to time.
22 This year, we were able to put together a
23 coalition that included TOC, included CARF, included all the
24 tracks, and the bill became law.
25 And what the bill does, Mr. Chairman, is it

1 authorizes 45 mini-satellite wagering facilities, 15 in each
2 zone, that would be placed in existing businesses. Most of
3 the wagering would probably be done by self-service
4 machines. And it places a burden on this Board, in that
5 according to the legislation, by April 1st you are to have
6 emergency regulations to implement this law, and the idea is
7 to hopefully have some of these facilities up and running
8 for Kentucky Derby weekend in '08.
9 And I wanted to, number one, bring this to the
10 attention of the Board and, number two, Mr. Chairman, I
11 would encourage you to form an industry ad hoc committee to
12 work with your staff to draft the regulations to implement
13 the law, so that when April 1st comes along, the
14 regulations, hopefully, will have been approved by AOL, and
15 at your April meeting we may have actual licenses to be
16 issued to these mini-satellite facilities.
17 And that's basically what I wanted to inform you
18 of.
19 COMMISSION CHAIRMAN SHAPIRO: Well, thank you, Mr.
20 Blonien. I am aware that the law was passed and your good
21 work was -- should be very much appreciated by the industry.
22 We will ask staff to get on that immediately, so
23 that we can enact whatever rules and regulations are
24 required of us, so that we can avail ourselves of the
25 additional 45 mini-satellite facilities.

1 Doug Kempt? Is Doug here?
2 MR. KEMPT: Yes, Doug is here.
3 COMMISSION CHAIRMAN SHAPIRO: All right.
4 MR. KEMPT: Doug is almost always here, but
5 usually silent.
6 COMMISSION CHAIRMAN SHAPIRO: All right, go ahead,
7 Doug.
8 MR. KEMPT: Doug Kempt, with Local 280. My
9 comment is just going to come in the form of a question. I
10 was making notes here. And that is, has anybody on the CHRB
11 or the staff been notified by anyone, or anybody in this
12 industry about closing a Southern California satellite for
13 one day, specifically next Wednesday, October 24th, for a
14 bus trip?
15 COMMISSION CHAIRMAN SHAPIRO: I'm not aware of it,
16 but wouldn't that come to staff?
17 MR. KEMPT: Yeah, that was my question, if anybody
18 had heard that?
19 COMMISSION CHAIRMAN SHAPIRO: No. But why don't
20 you take that up with staff, I don't think that's a Board
21 matter.
22 MR. KEMPT: Okay. Does the Board have to approve
23 something like that, closing a satellite for one day?
24 COMMISSION CHAIRMAN SHAPIRO: You know what, I
25 don't think we know that.

1 MR. KEMPT: Okay.
2 COMMISSION CHAIRMAN SHAPIRO: And, again, I would
3 recommend that you run that through staff and see what the
4 issue is, because we're just not aware of it.
5 MR. KEMPT: Okay, I appreciate it.
6 COMMISSION CHAIRMAN SHAPIRO: Thank you.
7 MR. KORBY: Chris Korby, California Association of
8 Racing Fairs.
9 I think I can shed some light on this. We're
10 working on a promotion with the Victorville satellite
11 facility, at which -- at one time envisioned that perhaps
12 the satellite facility would close for one day and all the
13 patrons would be bussed to Santa Anita for a day at the
14 races. We're going to continue with that promotion, which I
15 think is a terrific idea, but we're not going to close the
16 satellite.
17 So that was some earlier planning versions that
18 Doug was apparently referring to.
19 COMMISSION CHAIRMAN SHAPIRO: Okay. But, again, I
20 think that's a matter that shouldn't come before the Board,
21 it should come to staff.
22 MR. KORBY: That's right.
23 COMMISSION CHAIRMAN SHAPIRO: Okay, thank you.
24 MR. COUTO: Mr. Chairman?
25 COMMISSION CHAIRMAN SHAPIRO: Yes.

1 MR. COUTO: Drew Couto. On public comment I did
2 have a card in, as well, and I just wanted to ask --
3 COMMISSION CHAIRMAN SHAPIRO: I'm sorry.
4 MR. COUTO: That's all right.
5 COMMISSION CHAIRMAN SHAPIRO: Yes, you did.
6 MR. COUTO: TOC and I believe the Jock's Guild
7 would like to make a request to the Board that at its
8 November meeting, that you place on the agenda an item for
9 discussion, and we'll let the Board know before the deadline
10 whether or not we'll request any action, as well. But it
11 relates to the health insurance for California riders.
12 And the Guild, and TOC, and others are working to
13 come up with a plan to hopefully improve the health
14 insurance, and a way to manage it. And so we'd like to
15 discuss that with the Board in November.
16 COMMISSION CHAIRMAN SHAPIRO: I think it's --
17 obviously, I've been part of those discussions, I understand
18 it, and I think it's absolutely necessary and we will make
19 sure that that's on our November agenda.
20 MR. COUTO: Great, thanks.
21 COMMISSION CHAIRMAN SHAPIRO: Thank you.
22 Okay, Mr. Jamgotchian, do you have something else
23 to talk about?
24 MR. JAMGOTCHIAN: Yes, Mr. Shapiro, with regards
25 to an agenda item on the next agenda, I think that the Board

1 ought to also put on the heel nerve issue that the
2 Medication Committee sought approval of. It just seemed to
3 disappear. And I'm just wondering, since you're a proponent
4 of protection of horses, then why the CHRB won't ban heel
5 nerving. Is there some reason why?
6 COMMISSION CHAIRMAN SHAPIRO: This is a comment
7 period, I'm going to let you comment.
8 MR. JAMGOTCHIAN: Well, he just put something on
9 the agenda -- he asked you to put something on the agenda.
10 So, Mr. Shapiro, I'm asking you, in the protection of horses
11 in this State, if you would put the heel nerving on the
12 agenda, the banning of heel nerving. So if you want to
13 protect the horses, maybe you'll do that.
14 Additionally, I'd like to thank the CHRB for the
15 $17,900 check that they paid me. Obviously, it was another
16 lawsuit that was brought on by Ms. Fermin's inability to
17 follow the California Public Records Act. She's learned
18 now, twice. But, unfortunately, she's going to learn a
19 third time.
20 And that brings up the issue that I meant earlier
21 with Mr. -- that I discussed earlier, that the Government
22 Code 54957.1 requires a legislative body to publicly report
23 any action taken in closed session, and the vote or
24 abstention of any member present thereon, and I don't hear
25 anything. There was a closed session and the items of the

1 closed session were identified, but there's been no response
2 by this Board pursuant to State law.
3 And I'd like to ask Mr. Knight to tell me why?
4 DEPUTY ATTORNEY GENERAL KNIGHT: The Board has
5 complied with the Open Meeting law in this matter.
6 MR. JAMGOTCHIAN: Okay. And how has it complied,
7 it didn't make an announcement, did it? Publicly report any
8 action. Was any action taken?
9 DEPUTY ATTORNEY GENERAL KNIGHT: The Board has
10 complied with the Open Meeting law, and that section you're
11 citing doesn't apply to this Board. But the comparable
12 State section, they complied with.
13 MR. JAMGOTCHIAN: Okay. Well, we'll assess that.
14 Additionally, with regards to today, I was
15 wondering if there's been any decision made as to the
16 replacement of the Executive Director? Any decision, I
17 mean --
18 COMMISSION CHAIRMAN SHAPIRO: This is a comment
19 period.
20 MR. JAMGOTCHIAN: Oh, okay.
21 COMMISSION CHAIRMAN SHAPIRO: If you would like to
22 make a comment, please make your comment?
23 MR. JAMGOTCHIAN: Okay, I'm making comments
24 because I hear that Ms. Fermin is going to be either, A,
25 retiring or, B, being replaced. So I think it would be

1 important for the people to know if that's the case.
2 Okay. Well, anyway, with regards to that, there's
3 a horse running today, which I think's got a lot of karma,
4 and it's in the six race, Ingrid The Gambler.
5 COMMISSION CHAIRMAN SHAPIRO: Okay, Mr.
6 Jamgotchian, if you have -- you're done. We're done. No,
7 Mr. Jamgotchian, we're done.
8 MR. JAMGOTCHIAN: I have --
9 COMMISSION CHAIRMAN SHAPIRO: I'm going to -- on
10 that note, you obviously have nothing pertinent, which is
11 relevant to Board business.
12 MR. JAMGOTCHIAN: Oh, no, I do. Oh, no, I do.
13 COMMISSION CHAIRMAN SHAPIRO: It does not have any
14 thing to do with general business of this Board.
15 MR. JAMGOTCHIAN: You are not -- excuse me.
16 COMMISSION CHAIRMAN SHAPIRO: Therefore, I'm going
17 to adjourn the meeting and thank everybody. Thank you very
18 much.
19 MR. JAMGOTCHIAN: Okay, Mr. Shapiro.
20 (Thereupon the California Horse Racing
21 Board Regular Meeting was adjourned at
22 12:45 p.m.)
23 --oOo--
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CERTIFICATE OF REPORTER

I, TROY A. RAY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Meeting of the California Horse Racing Board; that thereafter the recording was transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, or in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of October, 2007.

Troy A. Ray